

**Exhibit 3 to
Plaintiff the State of North
Dakota's Opposition to
Defendant's Motion for
Protective Order
(ECF No. 202)**

April 22, 2022

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

STATE OF NORTH DAKOTA

Plaintiff,

v.

Civil No. 1:19-cv-00150-DMT-ARS

THE UNITED STATES OF AMERICA,

Defendant.

AND ALL RELATED CROSS-ACTIONS.

VIDEOCONFERENCE DEPOSITION OF
LIEUTENANT GENERAL SCOTT SPELLMON

FRIDAY, APRIL 22, 2022

7:32 a.m.

APPEARING REMOTELY FROM

WASHINGTON, D.C.

REPORTED BY:

Cheryl L. Haase

RPR No. 12443

Appearing from Linn County, Oregon

April 22, 2022

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1 REPORTED REMOTELY FROM LINN COUNTY, OREGON

2 FRIDAY, APRIL 22, 2022 7:32 a.m.

3
4 THE VIDEOGRAPHER: We are on the record at
5 7:32 a.m. on April 22nd, 2022. Audio and video recording
6 will continue to take place unless all parties agree to go
7 off the record.

8 Please note that microphones are sensitive
9 and may pick up whispering and private conversations.
10 Private conversations and/or attorney-client interactions
11 should be held outside the presence of the remote interface.

12 For the purpose of creating a witness-only
13 video recording, the witness is being spotlighted or locked
14 on all video screens while in speaker view. We ask that the
15 witness not remove the spotlight setting during the
16 deposition, as it may cause other participants to appear on
17 the final video, rather than just the witness.

18 For anyone who does not want the witness's
19 video to take up a large part of your screen, you may click
20 the gallery view button in the upper-right corner of the
21 remote depo interface.

22 This is the video recorded proceeding of
23 Lieutenant General Scott Spellmon, taken by counsel for the
24 plaintiff in the matter of State of North Dakota versus The
25 United States of America, filed in the United States

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1 District Court for the District of North Dakota, Western
2 Division.

3 This proceeding is being held via Zoom, with
4 all participants attending remotely. My name is Pasha
5 Korneychuk. I'm the videographer on behalf of US Legal
6 Support located at 16825 Northchase Drive, Suite 900,
7 Houston, Texas 77060.

8 I am not related to any party in this action,
9 nor am I financially interested in the outcome. The court
10 reporter is Cheryl Haase on behalf of US Legal Support.

11 Counsel will state their appearances for the
12 record, after which the court reporter will enter the
13 statement for remote proceedings into the record and swear
14 in the witness.

15 MR. SEBY: This is Paul Seby. I'm counsel
16 for the State of North Dakota.

17 MS. ZILIOLI: And this is Erica Zilioli,
18 counsel for the Defendant United States, and Co-counsel Jane
19 Bobet from the U.S. Attorney's Office.

20 THE REPORTER: Hold, please.

21 Good morning. The attorneys participating in
22 this deposition acknowledge that I am not physically present
23 in the deposition room and that I will be reporting the
24 deposition remotely.

25 They further acknowledge that in lieu of an

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1 oath administered in person, the witness will verbally
2 declare his testimony in the matter is under penalty of
3 perjury.

4 The parties and their counsel consent to this
5 arrangement and waive any objections to this manner of
6 reporting. Please indicate your agreement by stating your
7 name and your agreement on the record.

8 MR. SEBY: Counsel for the plaintiff,
9 Paul Seby, agrees and accepts the terms.

10 MS. ZILIOI: And Erica Zilioli, counsel for
11 the defendant, agrees and accepts the terms.

12 THE REPORTER: Sir, would you raise your
13 right hand?
14

15 LIEUTENANT GENERAL SCOTT ALAN SPELLMON,
16 called as a witness,
17 having been first duly affirmed,
18 was examined and testified as follows:
19

20 MR. SEBY: Are we ready?

21 THE REPORTER: Yes. Proceed.

22 MR. SEBY: Okay. Thank you.

23 This will be the deposition of -- of Scott
24 Spellmon taken pursuant to prior notice and agreement of
25 counsel.

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EXAMINATION

BY MR. SEBY:

Q. Good -- good morning, Lieutenant General Spellmon. My name is Paul Seby. I'm both an attorney with the law firm of Greenburg Traurig and a Special Assistant Attorney General for the State of North Dakota, and I represent the state of North Dakota today, who I will refer to as -- collectively as North Dakota.

You understand that you have been sworn in this morning?

A. Yes.

Q. And would you please state your full name for the record?

A. Scott Allen Spellmon.

Q. Thank you. Do you go by any other names, sir?

A. No.

Q. Okay. And because I want to be both accurate and respective, what is the proper way to refer to you, sir, is it General Spellmon or Lieutenant General Spellmon?

A. General Spellmon.

Q. Okay. Thank you. Before we begin, I'd like to go over a few basic ground -- ground rules for this deposition, most -- most of which are intended to help the court

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1 reporter and videographer take down everything we say. Is
2 that okay?

3 A. Yes.

4 Q. Thank you. Everything we say, of course, is being
5 written down and videotaped. And because of that I would
6 ask that you verbalize your responses with a yes or a no or
7 other answer, as opposed to merely nodding your head yes or
8 no. Also, please, no huh-uhs or nuh-huhs if that's
9 acceptable.

10 A. Yes, I understand.

11 Q. Thank you. And likewise it's difficult for the
12 court reporter to take down what we are saying if we are
13 talking over each other inadvertently. So I will do my best
14 not to interrupt you, sir, and if you would please do the
15 same, try not to interrupt me and let me finish my
16 questions, that would be great. Is that acceptable?

17 A. I will not interrupt you, sir.

18 Q. Neither I, purposely. So if you need a break,
19 please just let me know. I just ask if there's a question
20 pending, that your -- you answer the question pending and
21 then we can take a break.

22 Otherwise, I'll probably try to suggest that
23 we take a short break every hour or so.

24 If you don't understand a question that I've
25 posed, please just let me know. Ask me to repeat it or

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1 rephrase it and I will do my best to clarify what I'm trying
2 to ask you. Does that sound okay?

3 A. Yes, sir. Thank you.

4 Q. And if you answer a question I have asked, I'm
5 going to assume that you've understood the question that I'm
6 asking. Is that understood?

7 A. I understand.

8 Q. Thank you. Sir, is anyone in the room with you
9 today?

10 A. Yes.

11 Q. And who are those individuals?

12 A. It's Erica, our Department of Justice counsel, and
13 I have my aide Major Katie Borbeck [ph.], who is operating
14 the video and IT equipment for us.

15 Q. Okay. Thank you. I'd ask you please to turn off
16 your other electric -- electronic devices if you have any so
17 you're not distracted during the deposition if that's
18 possible.

19 And I'll also ask that if you're re --
20 relying on some document during this deposition to answer a
21 question, for example notes that you've made or an email
22 that you wanted to keep close, please let me know if that's
23 the case, and then identify the document or documents for
24 the record. Just as you would if we were in the room
25 together. Is that okay?

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1 A. I understand. I don't have any notes with me.

2 Q. Okay. Thank you. Sir, do you have any questions
3 about these basic instructions?

4 A. No.

5 Q. Okay. Thank you. I understand you've been sworn
6 in, that you're -- that you understand that you're obligated
7 to -- by oath, to tell the truth today.

8 Do you understand that your deposition today
9 has the same force and effect as if you were in front of a
10 judge or jury?

11 A. Yes, I understand.

12 Q. Thank you. And do you understand, sir, that
13 portions of your videotaped deposition may be played to the
14 Court in this matter should it go to trial?

15 A. Yes, I understand.

16 Q. Okay. And -- and do you understand that if you
17 fail to tell the truth today, that is considered perjury?

18 A. Yes, I understand.

19 Q. Thank you. And -- and so you'll agree to tell the
20 truth today?

21 A. Yes.

22 Q. And so you'll agree to provide accurate testimony
23 today?

24 A. Yes.

25 Q. Okay. Thank you. And to that end, is there

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1 anything today preventing you from providing complete,
2 accurate and truthful testimony, to your knowledge?

3 A. No. No.

4 Q. Is there anything preventing you from recalling
5 and relating details other than perhaps the passage of time?

6 A. No.

7 Q. Okay. Sir, have you ever testified under oath
8 before?

9 A. I've testified to Congress under oath on about ten
10 occasions. I have never testified in a deposition like
11 this.

12 Q. Okay. How about at a -- an administrative or
13 judicial trial?

14 A. No.

15 Q. Or other proceeding?

16 A. No.

17 Q. Okay. Sir, before your deposition this morning
18 and today, had you or I ever met or spoken?

19 A. No.

20 Q. Okay. General Spellmon, what did you do to
21 prepare for your deposition today?

22 A. Several things. I went back and read an op-ed
23 that I had prepared for the Omaha World-Herald in the early
24 November 2016 time frame.

25 I went back and reviewed our Title 36, that

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1 is our rules and regulations governing the public's use of
2 lands associated with our civil works, our water structure
3 projects.

4 And I met with two attorneys from the
5 Department of Justice and one from the U.S. Army Corps of
6 Engineers' counsel office to walk through the basics of how
7 a deposition like this runs.

8 Q. Sure. I don't want to ask you anything about what
9 you discussed with your counsel, but can you tell me how
10 many times you had separate discussions or meetings with
11 them?

12 A. I had a two-hour session last week and a 90-minute
13 to two-hour session yesterday.

14 Q. Were those events in person or remotely?

15 A. It was a combination. Erica Zilioli was here in
16 person and the other -- the Corps counsel and the other
17 member from Department of Justice was virtual.

18 Q. And you mentioned Ms. Zilioli as one of the
19 attorneys that -- your counsel. Who are the other
20 individuals?

21 A. Jason DeRosa, and from Department of Justice
22 Bill -- and I'm sorry. I don't recall his last name.

23 Q. Okay. Sir, did you speak with anyone else other
24 than your counsel about this deposition today?

25 A. No.

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1 Q. No one else within the Department of the Army or
2 the U.S. Army Corps of Engineers?

3 A. So my front office that helps me in my daily
4 duties knows I am giving a -- a deposition today, they know
5 it's on my calendar, certainly my wife knows this is on my
6 calendar. But no -- no other details other than this is
7 scheduled for today.

8 Q. Okay. Other than your -- your wife and -- and
9 staff in your office, have you spoken with anyone outside of
10 the United States Government or the Army?

11 A. No.

12 Q. Okay. Thank you.

13 And you mentioned you reviewed some documents
14 in preparation for your deposition, just those two, the
15 op-ed and the Title 36 rules?

16 A. That's correct.

17 Q. Okay. Did you review the documents on your own or
18 did you do so with your legal counsel?

19 A. I did some on my own and I did some with -- with
20 legal counsel.

21 Q. Okay. Which documents did you review in -- in
22 each setting on your own and --

23 MS. ZILIOI: Objection to the extent it
24 calls for attorney-client privilege.
25

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1 BY MR. SEBY:

2 Q. Yes, and I'm not asking anything that you
3 discussed about those documents, just which documents.

4 A. Both of those documents.

5 Q. Okay. Did you do any research about the issues in
6 this case?

7 A. Just the research that I mentioned reviewing.
8 Title 36 and the -- as I mentioned, the op-ed that I had
9 prepared back in November of 2016. Again, just to refresh
10 my memory.

11 Q. Sure. Sure. And did you take any notes about the
12 events involved in this case that you referred to?

13 A. I did.

14 Q. Do you have those with you today?

15 A. No, I do not.

16 Q. Did you review any timeline or chronology of
17 events associated with the matters involved in this case?

18 A. Yes, I did.

19 Q. And what were they?

20 A. It was during my meeting last week. We reviewed
21 with the team a general chronology of the events as they
22 unfolded -- unfolded in late 2016, again just to refresh my
23 memory, as it's been five years.

24 Q. Sure. And was that a written document or just a
25 narrative discussion?

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1 A. It was a narrative discussion.

2 Q. Thank you. All right. Sir, we're here today in
3 the matter of the State of North Dakota versus the United
4 States, which is, as the reporter indicated, a case that is
5 pending in the United States District Court for the District
6 of North Dakota.

7 Are you aware of North Dakota's case against
8 the United States under the Federal Tort Claims Act
9 involving claims of \$38 million in damages that North Dakota
10 seeks as a result of the Corps' and other federal officials'
11 actions associated with the protests against the Dakota
12 Access Pipeline?

13 A. Yes. I am aware of the case.

14 Q. Have you ever seen a copy of the complaint filed
15 by the State of North Dakota in this case?

16 A. No, I have not.

17 Q. Okay. Are you aware that the United States
18 District Court for the District of North Dakota denied a
19 motion by the United States seeking to dismiss this case?

20 A. Yes, I'm aware.

21 Q. Have you read the Court's order denying the
22 United States' motion to dismiss?

23 A. I have not read the order.

24 Q. Okay. Are you aware of the order of the
25 United States District Court for the District of North

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1 Dakota compelling discovery against several agencies and
2 federal officials in addition to the Corps in this case?

3 A. Yes, I'm aware.

4 Q. Are you aware that the United States District
5 Court for the District of North Dakota denied a
6 United States motion seeking partial summary judgment in
7 this case?

8 A. I am not aware of that matter.

9 Q. Okay. So would it be accurate to say that you
10 have not read the order denying the United States' motion
11 for partial summary judgment?

12 A. I have not read that order.

13 Q. All right. Thank you. General Spellmon, I'd like
14 to ask you some basic questions about your background, sir.

15 Can you tell me, sir, where you are from?
16 Where were you born?

17 A. I am from Bloomingdale, New Jersey.

18 Q. Okay. And what is your current address, sir?

19 A. I currently live --

20 Q. Please -- I'm sorry. I want to clarify my
21 question. I don't want your street address. I would like
22 to know in what location is your primary residence and
23 places that you office, if -- if I may, sensitive to that
24 information being on the record.

25 A. My -- yes, sir. My home is at Fort McNair in

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1 Washington, D.C. And my headquarters is in Washington, D.C.

2 Q. Okay. Thank you. How long have you lived in --
3 at Fort McNair?

4 A. I've lived there for the past approximately 18
5 months.

6 Q. Okay. Sir, would you please summarize your
7 education and background?

8 A. I have a bachelor's of science degree from
9 United States Military Academy, 1986. I have a master of
10 science degree in civil engineering from the University of
11 Illinois, Champagne, 1998. And I have a master's degree in
12 national security strategy from the U.S. Army War College
13 from 2006.

14 Q. Okay. And, sir, how long have you worked for the
15 U.S. Army Corps of Engineers?

16 A. I have been in the Army Corps of Engineers now for
17 six-and-a-half years.

18 Q. And -- and in what capacity have you been in the
19 Army Corps of Engineers?

20 A. I served as the --

21 Q. I'm sorry. Over that period of time.

22 A. Yes. I served as the Northwestern Division
23 commander for a three-year period, I served as the deputy
24 commanding general of Civil and Emergency Operations for a
25 two-year period. And for the past 18 months I have served

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1 as the chief of engineers.

2 Q. And prior to your six years of service, sir, with
3 the Army Corps of Engineers, did you have any other military
4 service or history?

5 A. Yes, I came on active duty in 1986 and served --
6 in May I'll have been on active duty for 36 years. The bulk
7 of my time in the Army has been on the operational side of
8 our -- of our engineer regimen and combat engineer units in
9 the field. And as I mentioned, just for the past six years
10 I have served in the U.S. Army Corps of Engineers.

11 Q. Have you served any other branch of the United
12 States military?

13 A. No.

14 Q. Sir, have you received any commendations or
15 service awards?

16 A. Yes.

17 Q. Would you please give us an overview of those?

18 A. Yes. I apologize, I don't have them committed to
19 memory. I'll just highlight. I've been awarded two Bronze
20 Stars, received the Purple Heart, the Combat Action Badge,
21 and I've had several Army commendations.

22 Q. Okay. Did you receive any commendations for your
23 service as Northwest Division commander?

24 A. Yes.

25 Q. And would you please describe those?

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1 A. That was a Legion of Merit award after completion
2 of my three-year command tour.

3 Q. And I think I could do the math and get close, but
4 maybe it's just easier to ask, what was the period of years
5 for your service as Northwest Division commander for a
6 period of three years? When did that start and when did it
7 finish?

8 A. I need a moment.

9 Q. Sure. Sure.

10 A. 2015 to 2018.

11 Q. All right. Thank you. And, sir, do you have any
12 professional certifications or licenses?

13 A. I'm a -- I have one certification as a project
14 management professional, or PMP.

15 Q. Okay. How about licenses?

16 A. No.

17 Q. Okay. Are a member of any professional
18 organizations?

19 A. Yes.

20 Q. What would those be?

21 A. There are two. The Society of American Military
22 Engineers, or SAME, and the Army Engineer Association, or
23 AEA.

24 Q. Thank you. Can you please detail which locations
25 you've been stationed at during your almost 36 years of

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1 active duty?

2 A. I've had 21 different stations starting at
3 Fort Hood, Texas; Fort Benning, Georgia; Bamberg, Germany;
4 Hohenfels, Germany; Champaign, Illinois; Fort Leavenworth
5 Kansas; Fort Leonard Wood, Missouri; Monchengladbach,
6 Germany.

7 Back to Fort Benning; U.S. Army War College
8 at Carlisle; Fort Polk, Louisiana; back to Fort Leonard
9 Wood, Missouri; Fort Hood, Texas; Washington D.C.; and
10 Vancouver, Washington.

11 Q. Thank you. All right. So now I want to ask you a
12 question about the relevant time period of the protesters
13 against the Dakota Access Pipeline. Essentially if you
14 would, the bookends being spring of summer of 2016 to the
15 summer of 2017. During that period, sir, to whom did you
16 report and what was your position?

17 A. So from that time period I was the commander of
18 Northwestern Division, and I reported to the chief of
19 engineers at the time, Lieutenant General Todd Semonite.

20 Q. He -- Lieutenant General Semonite was your direct
21 report?

22 A. He was who I reported to.

23 Q. Okay.

24 A. He was my commander.

25 Q. Got it. And above the chief of engineers,

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1 General Semonite, who was above him in the Army Corps chain
2 of command?

3 A. No one. His chain of command went directly to the
4 chief of staff of the Army at the time, General Milley.

5 Q. Okay. So nobody within the Corps, but
6 General Milley within the Department of Army?

7 A. That's correct.

8 Q. Okay. And General Milley is -- was then the --
9 what was General Milley's title at that point, sir?

10 A. He was Chief of Staff of the Army.

11 Q. Got it. And would he have been a member of the
12 Joint Chiefs of Staff?

13 A. Yes.

14 Q. General Spellmon, at that time did you report to
15 anyone in the civil works portion of the Corps?

16 A. Yes.

17 Q. And who were those individuals?

18 A. Civil works program at the time was run by
19 Major General Ed Jackson, and above General Jackson, our
20 political leadership resides in the Assistant Secretary of
21 the Army for Civil Works.

22 Q. And who was that individual at the time, or
23 individuals, plural, whether -- if that was the case?

24 A. I'll mention two individuals. The Assistant
25 Secretary at the time was Ms. Jo-Ellen Darcy, and she had a

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1 principal deputy whose name was Lowry Crook, Mr. Lowry
2 Crook.

3 Q. Okay. In that -- in your position as the
4 Northwest Division Commander, sir, who reported to you?

5 A. I had five District Commanders. Our region
6 covered a 17-state footprint, primarily within the Missouri
7 and Columbia River Basins, so that would have been a Kansas
8 City District Commander, our Omaha District Commander,
9 Walla Walla District, Seattle District, and our Portland
10 District Commanders.

11 Q. Okay. General Spellmon, apart from your long and
12 significant military career, almost 36 years I think you
13 mentioned, soon, next month, do you have any civilian
14 professional history in addition to that?

15 A. No.

16 Q. Okay. Thank you for that. I'd like to ask you
17 some questions about the how the Corps -- what kinds of
18 project lands and water projects the Corps manages and
19 oversees just generally.

20 A. So this is generally land that is associated with
21 our civil works projects, many of these, we operate hundreds
22 today of recreation areas around the country that are
23 associated with those -- those water resource projects, and
24 its recreation mission is part of our mission within the
25 Corps.

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1 Q. And the water resource projects that you're
2 referring to, in addition to the recreational aspect, the
3 water projects, if you could describe what those -- what
4 is -- and the basis of those are?

5 A. Yes, sir. So today we own and operate 715
6 projects, dams that serve a variety of purposes throughout
7 the country.

8 We own and operate 239 navigation locks that
9 allow traffic, waterborne traffic to go up and down the
10 nation's waterways.

11 We own and operate 15,000 miles of levee that
12 provide flood protection to communities throughout the
13 country.

14 Q. Is the land (sic) a significant landowner or land
15 management agency?

16 A. I'm sorry. I don't understand your question.

17 Q. Associated -- you indicated that there are lands
18 within water resource projects, and I'm just trying to ask,
19 do you know the -- you gave some very specific details about
20 the number of locks and the number of dams and the number of
21 miles of levee system. Do you happen to know the amount of
22 lands the Corps is responsible for under its jurisdiction?

23 A. I'm sorry. I can get that number. I -- I don't
24 have that, acres or square miles committed to -- to memory.
25 I -- I don't know.

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1 Q. No problem. It's a big number, though, isn't it?

2 A. Yeah, yes.

3 Q. Okay. So with respect to -- I want to ask you
4 some questions with respect to the Corps' rules and
5 procedures and policies governing the use of its project
6 lands, is that okay?

7 A. Yes.

8 Q. Okay. Sir, would you please describe your
9 experience in training in the management of lands that are
10 under the jurisdiction and control of the Army Corps?

11 A. Yes. So I'll say I don't recall any specific
12 training on Title 36. All new commanders when they come to
13 the Corps for the first time, whether that's as a general
14 officer, as I did, or as a lieutenant colonel coming to a
15 district, we come to a course we call our pre-command
16 course.

17 That's a one-week training session here in
18 Washington, D.C., where we review all of the -- the wide
19 variety of mission areas that we have within the Corps, and
20 of course recreation being one of those.

21 But I don't recall as part of that training,
22 anything overly specific regarding Title 36.

23 Q. Okay. And -- and who conducts that training for
24 the Corps with respect to those individuals entering into
25 the training?

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1 A. It's -- it's a variety. The commander, the chief
2 of engineers participates in that training, we bring in
3 serving district commanders, we bring in former district
4 commanders. And we use the staff here at the -- the
5 headquarters, variety of staff here at the headquarters,
6 experts in their various fields, to conduct that training
7 for the inbound officers.

8 Q. And is -- I want to make sure I understood your --
9 your comment there, your statement about training with
10 respect to Title 36. Are you saying that that is a specific
11 topic for that one-week session?

12 A. No, I -- I don't recall it being a specific topic.

13 Q. Okay. Given -- given that, when did you become
14 familiar -- familiar with the Corps' regulations and
15 policies regarding the use of the Corps' lands?

16 A. I recall it being in the early -- early spring,
17 summer of 2015, as we began to work with the state and the
18 tribe in navigating our way through this -- this protest
19 period of time concerning the Dakota Access Pipeline.
20 That's when I remember my first real exposure to Title 36.

21 Q. And you said that was in early the spring or
22 summer of 2015?

23 A. That's correct. I'm sorry. '16.

24 Q. '16?

25 A. I'm sorry. '16.

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1 Q. Oh, no problem. That's why I wanted to clarify
2 that.

3 Okay. And do you recall the manner in which
4 that came to your attention and the Corps regulations and
5 policies regarding the use of the Corps lands?

6 A. Yes, it was around the same time that we were
7 seeing applications for special use permits from the
8 Standing Rock Sioux Tribe, and other groups that wanted to
9 occupy lands associated with our project at Lake Oahe.

10 Q. Other than the Standing Rock Sioux Tribe that you
11 mentioned, who were the other groups?

12 A. I don't recall other -- there was a -- there was
13 request for a prayer service, an individual wanted to have
14 a -- occupy a piece of land for a prayer service. I'm
15 sorry, I don't remember the name or the dates, and as you
16 know there were a variety of camps out in this vicinity
17 during this time frame.

18 Q. Okay. And at that time when you -- I think early
19 spring, summer of 2016 when a special use permit application
20 was raised to your attention, who raised that to your
21 attention?

22 A. Colonel Henderson, who was our Omaha District
23 Commander during this time frame.

24 Q. Okay. Okay. And as a result of Colonel Henderson
25 advising you of Title 36 and policies associated with it,

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1 did you initiate any self effort, self teaching, or review
2 at that time?

3 MS. ZILIOLO: Objection. Mischaracterizes
4 testimony.

5 A. I -- are you --

6 BY MR. SEBY:

7 Q. I'm sorry. Sir, I apologize. I just want to make
8 sure you understand my question and if I've not been clear,
9 I'd be happy to rephrase it.

10 A. Sir, could you repeat the question?

11 Q. Sure. In the early spring and summer of 2016
12 time frame when you became aware of the Corps' regulations
13 and policies regarding the use of its lands, and I'm going
14 to refer to that as Title 36 and associated policies, I
15 believe you said that it was raised to your attention by
16 Colonel Henderson, so two questions:

17 What is meant by Colonel Henderson raising it
18 to your attention, and based upon him raising it to your
19 attention, as you'll explain, please, what that involved,
20 did you conduct any independent self teaching or review?

21 MS. ZILIOLO: Objection, compound.

22 A. I did review Title 36 when Colonel Henderson
23 informed me that he was considering an application for a
24 special use permit.

25

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1 BY MR. SEBY:

2 Q. Okay. Did you review any policies in addition to
3 the Code of Federal Regulations, that -- Corps policies?

4 A. I do not recall reviewing any additional policies.

5 Q. Okay. General Spellmon, prior to the DAPL protest
6 with the Corps special use permit process, have you ever
7 been involved in a past process involving an application for
8 a special use permit?

9 A. So, sir, I never served as a -- as a district
10 commander. And these issues are largely managed at the
11 district level, not at the regional level, or certainly not
12 at the headquarters level. So, no, I had not had any
13 experience with special use permits before this time period.

14 Q. Okay. Thank you. And I understand.

15 So -- so is it fair to say in the past you
16 never granted or denied one, or were involved in the
17 consideration of whether to grant or deny?

18 A. That's correct. I was never involved in the
19 consideration of a special use permit prior.

20 Q. Okay. And -- and I'm sorry, I believe you just
21 commented or testified as to who issued special use permits
22 for the Corps, is that correct?

23 A. Our -- our district commanders do.

24 Q. Okay. And when you were Northwest Division
25 Commander, were you involved in any other special use permit

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1 considerations during that three-year period, other than
2 those associated with the Dakota Access Pipeline protests?

3 A. I do not recall being involved in any other
4 special use permit in any of the other districts.

5 Q. Okay. With respect to the Corps' special use
6 permit process, Title 36, and associated policies, would --
7 are you able to walk me through generally what that involves
8 and what's required for that process?

9 A. What I know, again having never served as a
10 district commander, if an individual or group from the
11 public wants to use lands associated with a Corps project,
12 there is an application process that they work with, the
13 district staff, and take to the district commander.

14 And as outlined in Title 36 there are certain
15 terms and conditions that the group, the applicant, must
16 meet before that special use permit can be approved.

17 Q. Okay. Is it your understanding based upon your
18 experience and background that a special use permit is
19 supposed to be obtained prior to an activity taking place?

20 A. Yes.

21 Q. And do you agree that the purpose of a special use
22 permit is to protect the Corps property, including the
23 environment, and maintain law and order, preventing damage
24 to the Corps' property?

25 A. That's correct.

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1 Q. And do you agree that another purpose of the
2 special use permit is to ensure the applicant, if granted a
3 permit from the Corps, an effective permit, has the ability
4 to pay for any damage caused?

5 A. Yes, that's correct.

6 Q. Would you believe it's fair to say that another
7 purpose of the special use permit is to ensure that not just
8 anyone shows up on Corps land and starts doing whatever they
9 want, is that correct?

10 A. That's correct.

11 MS. ZILIOLO: Objection, ambiguous.

12 BY MR. SEBY:

13 Q. All right. Sir, thank you. As I said, we'll take
14 a break every hour or so. We're not there yet, but if you
15 feel as though a short break would be helpful, I'm glad to
16 do it now or -- or hold for another half hour or so.

17 A. Sir, I would welcome a short break now if that's
18 okay.

19 MR. SEBY: Absolutely. No -- and just tell
20 me if you feel like there's a desire for one, and -- and we
21 can do it. It's no problem. Would ten minutes be okay,
22 General?

23 A. That would be great, thank you.

24 MR. SEBY: Yeah. Thank you. Thank you.
25 We'll go off the record.

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1 THE VIDEOGRAPHER: Okay. Going off the
2 record at 8:13.

3 (Short recess taken.)

4 THE VIDEOGRAPHER: Going back on the record
5 at 8:23.

6 BY MR. SEBY:

7 Q. General Spellmon, we're back after a short break.
8 And now I'd like to ask you, turn to some questions with
9 respect to -- background questions regarding your role in
10 the DAPL protest.

11 Sir, would you describe your role with
12 respect to the protests, again the timeline being
13 approximately spring-summer of 2016 to spring-summer of
14 March 2017?

15 A. So I was the commander for Colonel Henderson,
16 certainly, of Omaha District, who was leading this effort
17 there in his -- his district footprint. My responsibilities
18 was to give him advice and also to help in communications
19 with elected leadership from state, law enforcement
20 leadership, both local and at the state level and then
21 communications with our headquarters here in Washington,
22 D.C.

23 Q. Okay. Do you recall what your first involvement
24 was in that period of time?

25 A. From my recollection, it began from -- my

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1 involvement was in the August -- mid -- early to mid-August
2 time frame.

3 Q. And what -- what events are you referring to or
4 period of time that -- that you did notice the beginning?

5 A. From what I recall, this is the period of time
6 where the Omaha District's environmental assessment received
7 several questions from the assistant secretary's office.
8 And I remember a -- an announcement made by Department of
9 the Army, and I believe two other federal agencies about
10 this particular work that Omaha District had completed.

11 Colonel Henderson had contacted me and was
12 frustrated that this went out in a letter from -- from the
13 Army and no one had talked to him. And so he had reached
14 out to me to express his frustration.

15 Q. And he was -- I'm sorry. The "this" that you
16 referred to that he was frustrated with, are you referring
17 to a joint statement?

18 A. That's -- that's what I'm referring to, yes,
19 that's correct.

20 Q. Okay. And could you elaborate on -- on the nature
21 of the frustration that was presented to you?

22 A. It's Army protocol, military protocol, normally we
23 would discuss such a statement like this to ensure everyone
24 in the chain of command was informed. I was not aware of
25 the -- the first joint statement, nor was Colonel Henderson.

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1 Q. And so you were -- you were -- you were surprised
2 by it, as Colonel Henderson was?

3 A. Yes.

4 Q. Okay. Do you recall doing anything to act on that
5 degree of surprise? Did you inquire about it with anyone
6 above you, if I can use that phrase, in terms of the
7 hierarchy of the Corps or the Department of the Army?

8 A. I did. I -- I contacted Major General Ed Jackson.

9 Q. And can you describe the nature of that contact?

10 A. Yes. First I shared, both -- with
11 General Jackson, my frustration and that of
12 Colonel Henderson, for not being aware that the joint
13 statement was -- was going to go out, or even the fact that
14 there -- there was one.

15 And then we -- we wanted -- I was trying to
16 get some additional information on what technical questions
17 the secretary's office may have had on the extensive work we
18 had done on the environmental assessment.

19 Q. And do you recall Major Jackson's response to your
20 contact?

21 A. Yes. He -- first of all, he -- I recall, he
22 thanked me for the call, and he had to go back and follow up
23 with the secretary's office.

24 From the best of my recollection,
25 General Jackson was not aware of any technical concerns or

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1 issues, and he had to do some follow-up engagement with
2 Mr. Crook and Ms. Darcy's staff.

3 Q. Was he aware of the joint statement when
4 you con -- first contacted him?

5 A. I don't recall if he was aware or not.

6 Q. And then Major Jackson pledged to look into it and
7 get back to you?

8 A. That's correct.

9 Q. And then how did that go?

10 A. So what followed from that was a series of
11 questions from the secretary's office on the sufficiency of
12 the environmental assessment in about six different areas.
13 And we were asked to take some time to go back and flush out
14 the environmental assessment and add more detail in -- in
15 the six areas.

16 Q. Do you recall what those six areas were?

17 A. I do not. I remember a few, and I don't remember
18 all six. There was some additional work that they wanted
19 done on the environmental justice section of the -- of the
20 assessment.

21 And there was some additional work that the
22 secretary asked us to do on -- to ensure that the latest
23 pipeline safety measures, monitors, instrumentation, were
24 being employed on this particular crossing of the pipeline
25 under Lake Oahe.

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1 I apologize. Those two are the ones that
2 stand out to, but there were four other areas where there
3 was a set of questions as well.

4 Q. Okay. And at this time the environmental
5 assessment that you're referring to was a final action by
6 the Corps and -- and the questions were with respect to that
7 final action?

8 A. Yes, that's my recollection, that the record of
9 decision had -- the environmental assessment had been signed
10 off by Colonel Henderson.

11 Q. Yeah. Yeah. Okay. We'll talk more about that
12 joint statement later, but -- so we'll leave that there.

13 And -- and do you recall, sir, what your last
14 matter of involvement was with the pro -- protest camps
15 concerning the -- the Dakota Access Pipeline?

16 A. My -- my very last involvement on this aspect of
17 it, dealing with the protests, was later in February or
18 March of 2017 while we were working to clean up the area
19 that was used north and south of the Cannonball River.

20 Q. And what was the reason for the focus on the area
21 north of the Cannonball River and south of the Cannonball
22 River? What was there to clean up?

23 A. Oh, there were -- I recall about 60 vehicles that
24 were -- were left. There was, I forget, many, many propane
25 tanks, pieces of tent, tarp, all kinds of -- there were

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1 human waste pits. And this all needed to be cleaned up
2 because this area is frequently inundated in the springtime
3 behind Oahe dam as -- of course, it's part of our flood risk
4 management project. We did not want any of that waste or
5 pollution getting into the water.

6 Q. Sure. And you indicated north and south were the
7 focus of those cleanup efforts, and the types of things that
8 had to be cleaned up. Is that because people were camping
9 in those locations, both of those locations?

10 A. Yes.

11 Q. Okay. And during that period of time as
12 Northwest -- is it Northwest district commander or division
13 commander?

14 A. Division commander.

15 Q. Division. Division over the districts is what --
16 what you said, I think, right?

17 A. That's correct.

18 Q. Understand. Okay. In your capacity as the
19 Northwest division commander, can you -- would you please
20 describe the scope of your authority, and by that I mean,
21 what decisions could you make with regard to the DAPL
22 protests occurring on Corps property?

23 A. The scope of my responsibilities in this matter I
24 felt were to aid Colonel Henderson in his dialogue with
25 state elected leaders, with law enforcement leaders, to aid

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1 where he needed it with the tribes, and to aid in our
2 communications to our headquarters in Washington, D.C.

3 Q. Okay. In that capacity, General Spellmon, did you
4 send up any decisions or issues for decision -- would be the
5 right way to say it -- up the chain of command in either the
6 civil works or the Department of the Army?

7 A. Not for decision. I did send up requests in --
8 for December of '16, in January of '17 for federal law
9 enforcement support where we thought we needed help. But I
10 did not ask for any decisions from my commander,
11 General Semonite.

12 Q. Okay.

13 A. Okay.

14 Q. Now, General Spellmon, do you recall when you
15 first learned that protesters associated with the Dakota
16 Access Pipelines were on lands managed and belonging to the
17 Corps of Engineers?

18 A. From my best recollection, it was August
19 time frame of 2016.

20 Q. Okay. Sir, do you recall how you learned that?

21 A. I learned that through the district commander,
22 Colonel Henderson.

23 Q. Okay. Do you recall the manner in which he
24 informed you of it? Was it by email, he picked up the
25 phone, saw you at a meeting? How did that happen?

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1 A. My best recollection, it was a phone call with
2 additional report and then follow-up email.

3 Q. Yeah. Okay. And based upon Colonel Henderson
4 advising you of that development, did you inform anyone else
5 in the Corps or the Department of the Army?

6 A. Right. We were collaborating at the same time
7 with Major General Jackson here in our headquarters.

8 Q. Sure. How about outside the Department of the
9 Army, but within the United States government at any -- any
10 level?

11 A. So we had recurring conversations with
12 Governor Dalrymple at the time, with the Morton County
13 sheriff, Sheriff Kirchmeier, had extensive conversations
14 with Major General Dohrmann, the state adjutant general, and
15 with Chairman Archambault. That dialogue was primarily
16 through Colonel Henderson.

17 Q. I guess the question -- let me go back to the
18 question, just -- it may not have been clear. When you
19 learned from Colonel Henderson that there were people
20 accessing and remaining on Corps land in August of 2016 as
21 you stated, did you -- did you contact the state in response
22 to that understanding? Is that what you're -- what you're
23 saying, you then picked up the phone or -- or met with state
24 and local officials?

25 A. My first phone call was to Major General

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1 Ed Jackson, and I do not recall the first time that these
2 phone calls and meetings were recurring, and I apologize, I
3 don't remember the first time that we picked up the phone
4 and talked to Governor Dalrymple or any other elected
5 leaders.

6 Q. Okay. So what I was asking is did -- when you --
7 when you learned from Colonel Henderson that those protests,
8 protesters were present on Corps land, your -- your -- your
9 next reaction wasn't to contact the governor or others in
10 North Dakota to tell them the news?

11 A. I -- I do not recall if Colonel Henderson had
12 already -- already made that contact. I just don't recall.

13 Q. Sure.

14 A. The first time, the first conversation, of many
15 that we had. I -- I -- I'm sorry. I don't remember the
16 first one.

17 Q. Understand. Understand.

18 And -- and when you learned from
19 Colonel Henderson that protesters were entering on and
20 remaining on Corps property, what did you do next?

21 A. So this is a -- a period of time -- this went on,
22 this coordination went on for -- for weeks. I don't recall
23 the immediate next step, but as I mentioned, we discussed at
24 length with Governor Dalrymple, whose priority at the time
25 was protecting the right of free speech and public safety,

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1 and we clearly understood his priority.

2 We met with Senator Heitkamp, Senator Hoeven,
3 then Congressman Cramer. I mentioned Major General
4 Dohrmann, the State Adjutant General. I've mentioned
5 Sheriff Kirchmeier. And again, to keep the lines of
6 communication clean, Colonel Henderson was our primary
7 communicator with Chairman Archambault of Standing Rock
8 Sioux Tribe at the time.

9 Q. Yeah. Do you recall when you reached out to
10 Governor Dalrymple and the other officials in North Dakota
11 that you mentioned, you did not do so to inform them of the
12 news, but to discuss it?

13 A. That's correct.

14 Q. Okay. All right. And you mentioned a --
15 a perspective that was shared with you from
16 Governor Dalrymple?

17 A. Yes.

18 Q. And was that shared upon your first contact with
19 him on this matter?

20 A. I don't recall if it was shared on the first. It
21 was one of the early engagements -- there were many -- that
22 we had with the governor. And I'll just repeat it, his
23 initial concern was public safety and -- and -- and allowing
24 the exercise of free speech in this matter.

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1 Q. Did he have any other concerns in addition to
2 those points?

3 A. In the early meetings, no, that was his primary
4 interest. Obviously as this went on in the weeks and weeks
5 ahead, he became more and more concerned with public safety.

6 Q. And what do you think is meant by concerns with
7 public safety? Can you break that down for me?

8 A. Sure. There were some of the protesters that were
9 not there for -- for peaceful protest. And that was his
10 concern. How do you protect the rights of those that were
11 there for exercise of free speech and peaceful protest from
12 those that were there for more aggressive behavior.

13 Q. Okay. And General Spellmon, do you know
14 approximately when the protesters started camping overnight
15 on Corps land?

16 A. From the best of my recollection it was in the
17 August time frame. It may have been earlier, but my
18 recollection was August.

19 Q. Yeah. Do you know, were those protesters sleeping
20 in designated Corps campgrounds?

21 A. So this was not -- this area north of the camp,
22 there were several camps, the one north of the Cannonball is
23 not -- is not a Corps campground, it is a flood control
24 easement at the time we leased out for -- for grazing.
25 There were other camps south of the Cannonball that were

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1 designated as campgrounds. And, yes, that was being used
2 for that purpose as well.

3 Q. Prior to those people being on the south camp are
4 you saying that your testimony is those were designated
5 campgrounds?

6 A. Yes.

7 Q. How designated, who designated?

8 A. So there was a special use permit that -- for the
9 camp, one of the camps on the south side of the
10 Cannonball River that was approved by Colonel Henderson for
11 this -- this purpose.

12 Q. And who was that special use permit that you're
13 saying was -- was issued for that purpose?

14 A. Standing Rock Sioux Tribe.

15 Q. And it authored -- do you know what it authorized?

16 A. I would have to go back and review the actual
17 letter and permit to know the -- the exact details.

18 Q. Okay. And do you recall when you first learned
19 that structures and roads were being built on Corps land
20 associated with the protest camps?

21 MS. ZILIOI: Objection, assumes facts not in
22 evidence.

23 BY MR. SEBY:

24 Q. I'm asking the question, sir.

25 A. I believe it was also in the same time frame of

April 22, 2022

1 mid to late August.

2 Q. I believe you spoke to this earlier, but I'm going
3 to ask it just to make sure I understand. Is it -- is it
4 accurate to say that in mid -- early to mid August that you
5 understood that some of the protesters were not peaceful?

6 A. That's -- that's correct, that was my assessment.

7 Q. And -- and how do you recall being advised of that
8 circumstance? Did you physically witness it firsthand or
9 were you informed by others?

10 A. I was informed by others, including primarily
11 Colonel Henderson.

12 Q. Okay. And -- and are you aware that not all of
13 the protesters were Native American or associated with the
14 Standing Rock Sioux Tribe?

15 A. I was very aware of that, yes.

16 Q. Okay. And would that include individuals who were
17 camping on Corps property south of the Cannonball River?

18 A. I don't know about the property south of
19 Cannonball River, I never -- I did not have the opportunity
20 to visit that site. I did have the opportunity to visit the
21 campground north of the Cannonball.

22 Q. Yeah. Okay. And -- and just again so I'm -- I'm
23 clear, you understand or understood and believe that protest
24 camps were set up on land south of the Cannonball River on
25 Corps property?

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1 A. Yes, I was aware.

2 Q. Okay. Do you happen to recall the name or names
3 of those camp locations on Corps property south of the
4 Cannonball River?

5 A. I don't recall all the names. They each had
6 several. I don't recall them. I -- I do recall the general
7 location of them.

8 Q. Okay. Did you ever go into any of the camps,
9 physically enter into any of the camps?

10 A. Yes.

11 Q. Do you recall which, north or south side of the
12 Cannonball River you -- you entered upon?

13 A. The large camp on the north side of the Cannonball
14 River.

15 Q. And was that on the area that the Corps had an
16 existing grazing lease issued to a -- a lessee?

17 A. That's correct, it was on that -- that land, that
18 property.

19 Q. Yeah. Is it accurate, sir, to refer to that as
20 the Dave Meyer's lease from the Corps?

21 A. I'm sorry. I'm sorry. I don't know the specific
22 name of the lease. I knew the purpose of the lease, I don't
23 remember the name.

24 Q. Okay. But it -- is it accurate to say you recall
25 it being a grazing lease?

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1 A. Yes, I recall it being a grazing lease.

2 Q. All right. And did you ever go on to any camp --
3 protest camp on Corps property south of the Cannonball
4 River?

5 A. No.

6 Q. Okay. Did you ever personally observe an improved
7 road on Corps property lined with flags?

8 MS. ZILIOI: Objection, ambiguous.

9 A. Could you be more specific, sir?

10 BY MR. SEBY:

11 Q. Yeah. You bet, you bet, and apologies.

12 Did you ever see with your own eyes an
13 improved road on Corps property that was lined with
14 flagpoles and flags?

15 A. From my visit in early October I remember there
16 being flags along the main north-south road route that led
17 from Bismarck down to the Cannonball. I'm going from memory
18 here, I believe it was State Route 1806.

19 I remember seeing many flags along that
20 route. I don't recall any improved roads on the camp north
21 of the Cannonball, certainly there were trails from repeated
22 vehicles, cars going in and out of the camp. I wouldn't
23 call it an improved road, but certainly a -- a trail. But I
24 don't recall seeing flags on either side of that.

25 Q. How about on the south side of the Cannonball

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1 River, a protest encampment on Corps property where there
2 was a road, whether it was improved or just worn by vehicle
3 traffic such as that you mentioned on the North Camp, where
4 there were several multiple flags flying on that route?

5 A. So, I'm sorry. I never had the opportunity to
6 visit any of the camps south of Cannonball, so I don't
7 recall any roads or -- or flags.

8 Q. Okay. And when you visited the camp located on
9 the north side of the Cannonball River where there was an
10 exiting Corps-issued grazing lease at that time, sir, I
11 believe you mentioned it was November, is that correct?

12 A. It was early October, I believe it was October 3rd
13 and 4th.

14 Q. Got it. Thank you. I apologize. October 3rd and
15 4th is the date of your visit to the north, a camp on the
16 northern side of the Cannonball River. At that time
17 General Spellmon, did you see any structures erected at that
18 time?

19 A. I saw tents, I saw people living under tarps, and
20 I saw very expensive campers and everything in -- in
21 between. So, in short, temporary structures, yes.

22 Q. Okay. And then from the beginning -- from the
23 beginning that you mentioned where Colonel Henderson advised
24 you in early to mid-August of 2016, after that point, I want
25 to make sure I understood what you said.

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1 From there on, you received status reports of
2 some kind from your reporting individuals at the Omaha
3 District, whether at the top that was Colonel Henderson and
4 people responsible to Colonel Henderson; is that accurate?

5 A. Yes, that's accurate.

6 Q. Okay. So Colonel Henderson would be one example.
7 Do -- do you know of other individuals that advised you from
8 time to time on -- on the status of the Corps property where
9 people were protesting the Dakota Access Pipeline?

10 A. So within the Corps it was certainly
11 Colonel Henderson. I was getting a lot of additional
12 information from both Senator Heitkamp, Senator Hoeven,
13 certainly Governor Dalrymple as well.

14 Q. How about within the Corps?

15 A. The information I was receiving from the Omaha
16 District was through Colonel Henderson. That would be the
17 appropriate line of communication.

18 Q. Exclusively?

19 A. Yes, I -- that's where I received my reporting was
20 from Colonel Henderson.

21 Q. Okay. Is it fair to say that other individuals
22 that reported to Colonel Henderson, I hate to use the word
23 "inferior officers," but I will for making the point,
24 subordinate officers to Colonel Henderson, did you receive
25 reports directly from any -- any of those individuals?

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1 A. It's likely. I -- I don't recall many. He had a
2 deputy, Major James Startzell that may have emailed me in
3 lieu of Colonel Henderson. That's certainly possible. But
4 I don't recall any -- any others from his staff directly
5 reaching out to me.

6 Q. Okay. So you could have received status reports
7 and information updates from Lieutenant Colonel Startzell?

8 A. That's correct.

9 Q. Okay. Thank you, sir.

10 You mentioned, I believe, that you, outside
11 of the Corps, that you received status and informational
12 updates from your conversations with Governor Dalrymple and
13 with the congressional delegation from North Dakota, is that
14 accurate?

15 A. That's correct.

16 Q. Okay.

17 A. That's accurate.

18 Q. Apart from those individuals, did you receive
19 information from -- directly from individuals in the state
20 of North Dakota that belonged to or were associated with law
21 enforcement agencies?

22 A. I recall conversations with
23 Major General Dohrmann, the state adjutant general.

24 Q. Yes. And do you recall when you first began to
25 communicate with Major General Dohrmann?

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1 A. My best recollection is this all began in the same
2 time frame in August and continued throughout.

3 Q. Okay. How about other North Dakota law
4 enforcement, whether they are with the state or a North
5 Dakota political subdivision, which includes counties and
6 cities and municipals?

7 A. I -- I don't recall meeting with any -- any local
8 leaders or any county leaders. The only other one I would
9 add is meeting with Sheriff Kirchmeier during my visit out
10 there in early October. And I had a conversation with him
11 as well.

12 Q. And Sheriff Kirchmeier, would that be -- would
13 that be the sheriff of Morton County, North Dakota?

14 A. That's correct.

15 Q. And did you meet with any other North Dakota law
16 enforcement officials from other counties or political
17 subdivisions of the state?

18 A. I don't recall meeting with other, other entities.

19 Q. Okay. Any recollection of ever meeting with
20 Sheriff Paul Laney of Cass County, North Dakota?

21 A. I don't recall meeting with -- with that
22 individual.

23 Q. Okay. And is the only time that you met and spoke
24 with Morton County Sheriff Kirchmeier at that time when you
25 were present in North Dakota on October 3rd and 4th?

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1 A. No, so we -- there would be numerous calls,
2 conference calls between the district, certainly my
3 headquarters in Portland, and the leadership there in the
4 state emergency operating center. And it's very possible
5 that Sheriff Kirchmeier was also on -- on those calls and
6 those conversations.

7 Q. And you participated in those as well?

8 A. Yes, at times I participated.

9 Q. Okay. How about outside the state of North Dakota
10 and its counties and other political subdivisions, did you
11 receive reports or briefings from other entities?

12 A. I don't recall receiving reports from outside,
13 anyone outside those we've already discussed.

14 Q. Okay. So -- so would it be fair to say that you
15 did not receive reports or briefings from the pipeline
16 company, Energy Transfers or Dakota Access, LLC?

17 A. I'm sorry. Let me correct what I said.

18 During my visit in October 3rd and 4th, I did
19 meet with several construction crews out in the field to get
20 their assessment of what they were experiencing, and I also
21 met with members of their private security firm that they
22 had -- that they had hired. Yes, I did have those
23 engagements while I was there.

24 Q. Okay. And just so I'm clear, what private
25 security company do you -- are you referring to that you met

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1 with?

2 A. I'm sorry. I don't recall the name. I do recall
3 that Dakota Access Energy Transfer Partners hired a private
4 security firm to help protect their construction crews out
5 in the field. I don't recall the -- the name.

6 Q. And do you recall what you were apprised of or
7 advised of by those two entities, you mentioned DAPL
8 construction crews in the field and apparently that
9 company's private security company. What did they tell you?

10 A. That's correct. They talked about their
11 experiences with the protest activity and gave examples
12 where they had to shut down work sites for given periods of
13 time.

14 They took me to several pieces of
15 construction equipment that had bricks thrown through
16 windshields that had been damaged by -- by the protesters,
17 some of the protesters.

18 Q. And so in the field when you spoke with those
19 individuals and -- and took that tour to see the work sites
20 and damaged equipment thereon, do you recall whose property
21 you were on at the time?

22 A. So I visited several segments of the pipeline
23 where work was ongoing, and as you know this pipeline
24 crossed a variety of private land and land that had been
25 acquired by Dakota Access.

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1 Q. So by virtue of pipeline crossing route and the
2 Dakota Access property, was that all of that private
3 property in some manner?

4 A. I believe the bulk of it was private property.
5 I'm sorry. I don't know the exact breakdown of state-owned
6 lands, private lands. I'm familiar with certainly our
7 federal property.

8 Q. Yeah. Sure. But at the time that you took those
9 tours to speak with construction workers building the
10 pipeline, installing it, constructing it, and the damaged
11 equipment, that occurred on private lands primarily?

12 A. Again, I don't recall who owned the land that this
13 equipment was on when I visited.

14 Q. Do you believe that any of it was ever Corps
15 property?

16 A. Where -- when I met with the private security firm
17 and the construction contractors out in the field, we were
18 not on Corps property.

19 Q. Got it. And back to the topic here of where you
20 received information and briefings, perspectives even, did
21 you receive such types of information from others not
22 associated with the Corps or the pipeline company and their
23 construction workers and security firm, for example, the
24 Standing Rock Sioux Tribe?

25 A. I do not recall getting any direct assessments

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1 from Chairman Archambault or members of the tribe. Again,
2 our primary line of communication to the tribe was through
3 Colonel Henderson.

4 Q. Yes. How about from any protestor groups or
5 representatives, real or asserted representatives?

6 A. I talked to a number of protesters that were in
7 the camp north of the Cannonball. I talked to protesters
8 that arrived at my home in Vancouver, Washington, on three
9 occasions. I talked to protesters that arrived at our
10 headquarters in Portland, Oregon, on several occasions to
11 get their perspectives.

12 Q. And many of those were involuntary contacts, I
13 understand?

14 A. They were -- they were voluntary. I wanted to
15 meet with them.

16 Q. Sure. Sure. Is it fair to say the individuals
17 that -- who showed up at your home, you weren't aware they
18 were coming until they knocked on the door or -- or talked
19 to you outside front of the house or something like that?

20 A. That's correct. I did not know any of those
21 groups were coming.

22 Q. Yeah. Okay. And, sir, within the United States
23 government, other than the Corps of Engineers, did you
24 receive any briefings or informational updates from anyone
25 in other capacities employed by the United States

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1 government, other agencies?

2 A. Not that I --

3 Q. Other --

4 A. I do not recall any other -- speaking with any
5 other agency.

6 Q. Okay. No one from the Department of Justice?

7 A. I remember speaking with my staff, certainly my
8 legal counsel, as we navigated our way through this. I
9 don't recall any direct engagements with the Department of
10 Justice.

11 Q. Okay. And would the same be true for the
12 Department of the Interior?

13 A. That's correct. I did not have any -- I do not
14 recall any direct engagements with folks from the Department
15 of Interior.

16 Q. Okay. General Spellmon, do you recall when you
17 became aware that the State of North Dakota or political
18 subdivisions thereof, or other law enforcement under the
19 supervision and direction of the State began to criminally
20 prosecute protesters for actions and conduct they took off
21 of the Corps property, elsewhere from the Corps property?

22 MS. ZILIOLO: Objection, foundation, assumes
23 facts.

24 A. I am not aware of -- of that time frame.
25

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1 BY MR. SEBY:

2 Q. Okay. And do you have any reason to question the
3 assertion that North Dakota state or local law enforcement
4 prosecuted individuals for actions they took off of the
5 Corps property?

6 MS. ZILIOI: Objection, foundation, assumes
7 facts.

8 A. I -- I don't have any reason to question that
9 those -- those -- that that occurred.

10 BY MR. SEBY:

11 Q. Okay. Are you aware of whether protesters who
12 were camping on Corps property used such property to
13 organize and prepare for actions taken off of the Corps
14 property?

15 A. I am -- I am not aware.

16 Q. Would that also be true, sir, for organizing and
17 preparing on Corps property to go on to other properties
18 owned, for example, private property owned by the pipeline
19 company, ranchers and farmers, or other landowners?

20 A. Sir, I'm sorry. I don't understand the question.

21 Q. Yeah, I'm sorry. I will -- I will try to rephrase
22 it. Are you aware of whether individuals in camps located
23 on Corps property used the Corps property to organize and
24 prepare for visiting, whether welcomed or not, on other
25 people's property?

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1 A. I am not aware.

2 Q. Okay. Are you aware of individuals using camps on
3 Corps property and their presence at such camps to organize
4 and prepare to go onto -- off of the Corps property to enter
5 on public roads or bridges?

6 A. I am not aware.

7 Q. Okay. Are you aware of protesters encamped on
8 Corps property using that property to organize and prepare
9 to go on trips to Bismarck or Mandan, North Dakota?

10 MS. ZILIOI: Objection, foundation, assumes
11 facts.

12 BY MR. SEBY:

13 Q. It's a question.

14 A. I'm not -- I'm not aware.

15 Q. Okay. And General Spellmon, I believe you
16 mentioned you interacted with North Dakota Governor
17 Jack Dalrymple, is that correct?

18 A. Yes, that's correct.

19 Q. Sir, did you ever meet in person with
20 Governor Dalrymple?

21 A. Yes.

22 Q. Do you recall, were such meetings located in his
23 office at the state of North Dakota capitol?

24 A. Yes, that's where I first met him face to face.

25 Q. And did you ever meet North Dakota Governor

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1 Jack Dalrymple in any other physical location?

2 A. I don't re -- not on this matter, certainly we had
3 other Missouri River business ongoing at the time. And it's
4 possible I met him in other locations on other operations of
5 the Corps not associated with the -- the pipeline.

6 Q. Sure? Sure. And on the instances that you met
7 with him in his office in the state of North Dakota capitol
8 building, how often -- do you recall the number of times
9 that such meetings occurred?

10 A. I think we had on the order, best of my
11 recollection, two to three meetings in his office. But
12 there were numerous phone calls in between those meetings
13 all through, beginning in August, really going all the way
14 through the end of his term, before Governor Burgum came on
15 board.

16 Q. Sure. Do you recall the time period that
17 Governor Dalrymple's term ended?

18 A. Early 2017.

19 Q. Do you know whether it would be more accurate to
20 say mid December of 2016?

21 A. I don't remember the exact time frame when I
22 stopped talking to Governor Dalrymple and I started talking
23 to Governor Burgum. It may have been December. I
24 apologize.

25 Q. No, no. It was just a clarification question on

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1 my part.

2 Moving on, when you met the two to three
3 times with Governor Dalrymple in person in his office,
4 and -- and I believe you said you spoke with him numerous
5 times over the course of several months, are you able to --
6 to -- to speak to what Governor Dalrymple asked of you?

7 A. Yes. Certainly he -- he reiterated his concern
8 for -- for public safety, and that was everyone's number one
9 priority.

10 The conversation started with how do we --how
11 do we -- how do we take care, how do we remove the
12 non-peaceful protest aspect of this, and his ask was how do
13 we -- how do we get these off of Corps property. That was
14 the general nature of our -- our conversations.

15 Q. Okay. And did he make that expression of -- those
16 expressions of concern, plural, to you when you first spoke
17 to him in mid August?

18 A. Yes.

19 Q. 2016?

20 A. Yes.

21 Q. Okay. And when you met with Governor Dalrymple in
22 his office, do you recall other individuals present at such
23 meetings?

24 A. Yes.

25 Q. Do you recall who those individuals were, sir?

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1 A. Our first meeting, Senator Hoeven came in about
2 halfway through our discussion.

3 Q. Into Governor Dalrymple's office?

4 A. Yes, that's correct.

5 Q. Okay. Are you referring to United States Senator
6 John Hoeven for the state of North Dakota?

7 A. Yes.

8 Q. All right. Sir, do you recall any other
9 individuals present in any of those two to three meetings
10 that you indicated in person with the governor?

11 A. There may have been a staff member from
12 Governor Dalrymple's team. I apologize. I don't recall
13 names. And I -- I had my aide-de-camp with me, who was
14 First Lieutenant Eric Chu, taking notes.

15 Q. Eric -- Eric Chu?

16 A. Yes, sir. C-H-U.

17 Q. Got it. And the aide-de-camp took notes of the
18 meeting?

19 A. Yes.

20 Q. Okay. Do you know where those notes reside to
21 this day?

22 A. I don't.

23 Q. Okay. Would you have been provided a copy of
24 those notes?

25 A. No, these were taken most likely in his notebook.

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1 Q. After the meeting, were you provided a written
2 summary of the meeting by Aide-de-Camp Chu?

3 A. No.

4 Q. Okay. What did -- what did Aide-de-Camp Chu do
5 with his notes, do you believe?

6 A. I don't know.

7 Q. Okay. Did you ever meet with the lieutenant
8 governor of North Dakota at the time?

9 A. Sir, I may have. I just don't recall if the
10 lieutenant governor was present.

11 Q. How about the head of the North Dakota Highway
12 Patrol?

13 A. I don't recall.

14 Q. Do you recall that Major General Dohrmann was
15 present in any of those two to three meetings that you had
16 with Governor Dalrymple in his office?

17 A. Yes, I believe he, General Dohrmann attended at
18 least one of these.

19 Q. Okay. All right. Any other -- any other
20 individuals come to mind who were there, or may have been
21 there?

22 A. Sir, again, I apologize. I was -- my focus on the
23 conversation was with the governor and the senator. And I
24 just don't remember other folks that may have come in during
25 those -- those discussions.

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1 Q. Understand. Switching, too, to your several
2 telephone conversations with the governor, were they
3 exclusively with the governor or were there other
4 participants either from your end or his?

5 A. Generally it was -- on my end it was just me, and
6 I don't know if he had other people in the room when he --
7 when he -- when he would call me.

8 Q. Okay. Okay. And earlier I asked you to summarize
9 what -- what Governor Dalrymple asked of you, and so I'll --
10 I'll ask you a similar question: What did you ask of
11 Governor Dalrymple, if you recall?

12 A. I don't re -- recall making any requests of the
13 governor or the senator. In this particular meeting, the
14 first one that I'm describing, Senator Hoeven was clearly
15 very animated and wanted the Corps to get the protest
16 activity off of our -- off of our managed lands.

17 And I'll just share with you the assessment
18 that I gave the governor and Senator Hoeven over a period of
19 weeks, that this was really not in the best interest of the
20 state or the local community.

21 Even if we had the means to remove the
22 protest activity from our managed lands, my assessment from
23 talking to many of the protesters, they were not interested
24 in going home. They would just end up on the other side of
25 the highway, maybe another part of the reservoir, and then

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1 occupy someone else's property to continue their activity.

2 That -- that was my assessment.

3 Q. So your assessment was to advise the governor and
4 whoever else was -- was meeting with you at the time, and I
5 guess that would include at least one meeting with
6 Senator Hoeven, you expressed concern that the protesters
7 were here to stay and that even if we could get them off our
8 property, I'm paraphrasing, I believe, accurately I hope,
9 otherwise, please correct me, that even if we could get them
10 off our property, they weren't leaving and they would be on
11 somebody else's property?

12 A. Yes, and I would just add to that I shared with
13 both the senator and the governor, we took the same stance
14 as Morton County and the state did for protest activity that
15 were on their lands.

16 They left them there, no one wanted to
17 magnify or increase the number of altercations between law
18 enforcement and the protesters, nor do any additional damage
19 to -- to property.

20 Q. And you -- you say that was the position of Morton
21 County as well?

22 A. I believe it was. Because there were several, I
23 recall one in particular, small encampment on state-managed
24 lands or county lands, that the County did not take action
25 on to remove the protest activity at that location, either.

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1 Q. And so that was, your impression on that was from
2 observation or because you were told that was the case?

3 A. That was my observation.

4 Q. Do you recall what basis you made that
5 observation, what -- what -- what was your observation based
6 upon in making that determination?

7 A. Sure. As I shared my assessment with the -- with
8 the leaders that were in this particular meeting, the one
9 that I just shared with you, that these protesters were not
10 interested in going home, certainly at this time frame,
11 before winter set in.

12 And if -- even if we had the means to -- to
13 remove them from the Corps-managed lands, they would find
14 other property to go and camp and further their -- their
15 activities on.

16 So it was my assessment we should not take
17 that action, it would only inflame. And I saw the same,
18 maybe unstated, but the same behavior on account of North
19 Dakota law enforcement with smaller camps that were on their
20 property.

21 Q. Thank you. And General Spellmon, which camps on
22 their state or county property are you referring to?

23 A. Sure. About I'm going from memory, about two, two
24 and a half miles north of the Cannonball River is the
25 location where the Dakota Access Pipeline crossed the state

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1 highway. And again going from memory, I believe it was
2 State Highway 1806, on the east side of that intersection
3 there was a small camp of tents that I noticed on my visits
4 to the -- to the region.

5 Q. And the fact that they were there and you
6 understood that not to be Corps property, did -- did you
7 know who it belonged to?

8 A. I did not know specifically who it belonged to.
9 It had very similar flags, of protest flags that we saw down
10 in the main camp. I'll call it the main camp, north of the
11 Cannonball. So my assumption was this was a similar, a
12 similar type of protest activity.

13 Q. Okay. And the fact that they were there led you
14 to believe that the county or the state accepted their
15 presence there. Is that what you're saying?

16 A. Yes.

17 Q. And how did you measure that? Just by the fact
18 that they were there or from one time to the other?

19 A. Could you -- I'm sorry. Could you repeat the
20 question?

21 Q. Sure. I'm trying to understand what -- what you
22 mean by saying that you formed your own observation based
23 upon observing people on an area that you described that you
24 understood was not Corps property, but belonged to somebody
25 else. I understood you didn't know who it belonged to and

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1 I'm -- now I'm asking on what basis did you observe and
2 believe that they were allowed to be there?

3 A. Yes. So I formed this impression from my
4 conversation with, certainly with General Dohrmann and I
5 believe Sheriff Kirchmeier when they initially pushed back
6 on my assessment in this October time frame, it was not a
7 good idea to try to remove protesters from Corps-managed
8 lands.

9 And when they pushed back on that, given the
10 concerns that I had, I mentioned to both of them that this,
11 doing this is the same manner, you're dealing with the
12 protest activity that's on your own property, and when I
13 pointed that out to them, that was just met with silence.

14 Q. And this -- this camp that you're referring to on
15 somebody's property, not the Corps' I guess, how -- how
16 large do you recall it being, approximately?

17 A. Sir, it was small. Maybe a few tents.

18 Q. Okay. Would that stand out as a -- a different
19 footprint in magnitude and scope than those camps present on
20 Corps property?

21 A. Yes.

22 Q. Okay. The latter being the larger?

23 A. The latter being larger, but I think not
24 necessarily the size of the camp that I'm mentioning here,
25 but the location. This is clearly where contracting crews

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1 had to work to get this pipeline safely underneath the state
2 highway.

3 MR. SEBY: Yeah. Okay. Let me just do a
4 time check here. I think we've been going for well over an
5 hour. Would, sir, would you appreciate and share my
6 interest in a short break on our respective ends?

7 THE WITNESS: Sir, I would -- I would share
8 your interest.

9 MR. SEBY: Great. Great. Let's --
10 Ms. Zilioli, would you be acceptable if we went off the
11 record for ten minutes for a break?

12 MS. ZILIOLO: Yes. Thank you.

13 MR. SEBY: Thank you. Thank you, sir.

14 THE WITNESS: Thank you.

15 THE VIDEOGRAPHER: Okay. Going off the
16 record at 9:22.

17 (Short recess taken.)

18 MS. ZILIOLO: Okay.

19 THE VIDEOGRAPHER: Going back on the record
20 at 9:40.

21 BY MS. ZILIOLO:

22 Q. General Spellmon, we're back again after a short
23 break, and I'd like to ask now if you could describe your
24 role, if any, in working with the Standing Rock Sioux
25 chairman, David Archambault?

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1 A. Yes, sir. I did not have, as I mentioned earlier,
2 I did not have a direct role at this part of the protest in
3 dealing directly with Chairman Archambault. Again, that was
4 primarily through Colonel Henderson.

5 Q. Yeah. And did you ever meet with Chairman
6 Henderson -- or, pardon me -- Chairman Archambault?

7 A. I do not recall a meeting with Chairman
8 Archambault during this time frame.

9 Q. The time frame being mid to late spring 2016 to
10 same time period 2017?

11 A. The last conversation I recall with -- with
12 Chairman Archambault was after the change in administration
13 and the -- the easement was approved, I was the one who
14 called him and informed him of that decision.

15 Q. And that would have been in what -- what
16 time frame, sir, are you referring to?

17 A. I believe it was late February of to 2017. May
18 have been early March.

19 Q. Okay. And prior to that you'd not met or spoken
20 with him; is that accurate?

21 A. I don't recall any -- any conversations or
22 meetings with him.

23 Q. And when you called him in late February of 2017,
24 can you elaborate on the purpose of the call?

25 A. Yes. The assistant secretary for Civil Works at

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1 the time had informed Congress of -- of the intent to
2 approve the easement for the pipeline under Lake Oahe and my
3 call was to inform Chairman Archambault of that decision.

4 Q. Sure. Were there others on the call at the time?

5 A. I believe it was just the chairman.

6 Q. How about on your end, sir?

7 A. It was just me.

8 Q. Okay. Do you recall his reaction when you advised
9 him of that development?

10 A. He was very quiet for a moment. Then he told me
11 he understood and we ended the call.

12 Q. Yeah. Okay. And the assistant secretary that you
13 referenced, that's the assistant secretary of the Army, is
14 that accurate?

15 A. At the time it was the acting assistant secretary
16 of the Army for Civil Works. And I believe -- I believe at
17 this time it was still Mr. Crook holding that -- that
18 office, while a new secretary was being nominated.

19 Q. Was Ms. Darcy out of her position at that time?

20 A. Yes, sir. I believe she had left office with
21 the -- with the administration. With the prior
22 administration.

23 Q. And Mr. Crook was still in place as the acting?

24 A. I believe that to be the case. There was another
25 individual that went over to the office -- I'm sorry, I

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1 cannot recall his name. It was either Mr. Crook or the
2 other individual that had informed us that the
3 administration decided to approve the -- the easement.

4 Q. And the other administration, are you referring to
5 the change in presidential administrations?

6 A. Yes.

7 Q. And just for purposes of making sure I understand,
8 you're referring to the change from the Obama -- President
9 Obama's administration to President Trump, I guess, right?

10 A. That's correct.

11 Q. All right. During the DAPL protest period of
12 mid 2016 to mid 2017, other than your conversation with
13 Chairman Archambault in late February of 2017, did you speak
14 with any other individual representative of the Standing
15 Rock Sioux Tribe nation?

16 A. Yes, sir. Sir, it's possible I spoke with council
17 members, not necessarily on the pipeline topic. As I
18 mentioned earlier there were other ongoing agency actions on
19 the Missouri River that were of interest to -- to the tribe.

20 Q. Sure. Okay. But you don't recall speaking to any
21 of those individuals with the Standing Rock Sioux Tribe
22 concerning the DAPL pipeline or the protests associated with
23 it?

24 A. No. It was pri -- the other discussions we were
25 having was on a program called the Missouri River Recovery

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1 Program, and how we were going about meeting our Endangered
2 Species Act obligations on the river, and the Standing Rock
3 would have a representative at those quarterly meetings.

4 Q. Sure. Yeah. Okay. With respect to your
5 impressions of Chairman Archambault, did you ever believe
6 that Chairman Archambault was personally directly calling
7 for protesters to come to North Dakota to engage in protests
8 against the Dakota Access Pipeline?

9 A. I'm not aware of any specific actions by
10 Chairman Archambault on that front.

11 Q. Okay. Did you perceive that that was the case
12 ever?

13 A. What I recall from Chairman Archambault was that
14 he had similar interests as all of us did on the safety of
15 the people and the public surrounding these -- these
16 protests. He shared that view. That's -- that's what I
17 recall.

18 Q. And again, that's because you hadn't spoken to
19 him, you said. You -- you took that as your impression,
20 right?

21 A. That came through the reporting from
22 Colonel Henderson, who was dealing directly with the
23 chairman.

24 Q. So when you say Chairman Archambault shared
25 other's concerns about safety, are you referring to public

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1 safety?

2 A. I'm referring to both public safety and the safety
3 of those that were there to exercise free speech and to
4 demonstrate, yes. I'm referring to both.

5 Q. Okay. Would you equate those public safety
6 concerns as you've elaborated on them as being the same as
7 Governor Dalrymple's?

8 A. I believe that the chairman absolutely shared that
9 priority as Governor Dalrymple and all of us on the concern
10 for safety.

11 Q. Okay. General Spellmon, do you recall when you
12 first learned that not all of the protesters on -- camping
13 on Corps property were not members of the Standing Rock
14 Sioux Tribe, if ever?

15 A. I don't recall when I first learned. I -- I saw
16 it firsthand during my visit to the camp on October 3rd and
17 4th, I met people from Connecticut, people from California,
18 other members of other tribes that were there, and a wide
19 array of people that occupied that -- that camp.

20 Q. Yep. Okay. And that's -- that camp, again, just
21 to be clear is, you're referring to the -- a camp located
22 north of the Cannonball River?

23 A. Yes, that's correct.

24 Q. On Corps property, but that was also leased to
25 a -- an individual for grazing purposes?

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1 A. Yes, that's correct.

2 Q. Okay. Were you ever advised, because I understand
3 you said you didn't know firsthand, but were you ever
4 advised that protesters camping on Corps property were using
5 Corps property to prepare and launch protests or other
6 activities on property in areas that were not on Corps
7 property?

8 A. I don't recall ever being advised that the
9 protests, if this is your question, was uniquely to those
10 that occupied Corps property.

11 Q. Okay. So you didn't see it firsthand and nobody
12 told you that was the case?

13 A. I -- I did not see it firsthand, that's correct.

14 Q. Okay. And then, second, you were never -- no one
15 ever shared an opinion or other information suggesting that
16 was the case, is that accurate?

17 A. That's accurate. The protesters could have been
18 coming from the Tribal reservation, they could have been
19 coming from out of hotel rooms in Bismarck.

20 Q. Okay.

21 A. I don't have any knowledge either way that it was
22 solely coming from the camp that was north of the
23 Cannonball.

24 Q. On -- on any instance?

25 A. That's correct.

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1 Q. How about from camps on Corps property south of
2 the Cannonball?

3 A. I don't know.

4 Q. Okay. Do you know whether the Corps monitored the
5 protest camp on Corps lands, plural?

6 A. Sir, can you be -- just be specific on what you
7 mean by "monitored"?

8 Q. Well, was there any Corps initiative that you
9 directed or were made aware of where Corps personnel were
10 observing protest camps located on Corps property?

11 A. We did not have any, that I'm aware of, any Corps
12 personnel that monitored the activity.

13 Q. If, given that answer, where did you or the Corps
14 obtain information and intelligence with respect to the
15 protesters camping on Corps property?

16 A. Right. So I mentioned earlier that I had made
17 visits to the region, Colonel Henderson had made visits to
18 the region with his team as well, and then information
19 sharing during our calls with Morton County law enforcement
20 and with General Dohrmann's team with the National Guard.

21 Q. Okay. So is it accurate to say your testimony is
22 is that North Dakota, the State of North Dakota and its
23 political subdivisions such as Morton County provided access
24 to the Corps with respect to information they had monitoring
25 the camps on Corps property?

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1 A. Yes, that's correct.

2 Q. Are you aware, sir, of any instance where you as
3 Northwest Division commander or Colonel Henderson as Omaha
4 District commander and his staff, ever asked for information
5 or intelligence from the State of North Dakota or county law
6 enforcement and for which you were not provided?

7 A. I -- I don't recall ever asking for any
8 intelligence or information. Law enforcement were -- were
9 good partners with us as we worked our way through this.

10 Q. And you're referring to the State of North Dakota
11 and county law enforcement in particular?

12 A. Yes, sir. That's correct.

13 Q. Okay. And that partnership you're referring to,
14 how did it function?

15 A. I think we -- we did very well keeping the
16 communication lines wide open. There was a lot of
17 frustration often expressed from the State to the Corps for,
18 in their words, allowing this protest to continue.

19 And we worked with -- with all of our
20 partners within our authorities to best address the public
21 safety aspects of this -- this protest activity.

22 Q. And how did you do that? How did you best -- you,
23 the Corps, best address public safety considerations?

24 A. Right. So, Mr. Seby, I shared with you earlier
25 one of the recommendations that both Colonel Henderson and I

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1 shared was -- was pushing back a bit on state enforcement
2 and elected leaders of the state on the desire to have the
3 Corps evacuate protesters from those that were on our -- our
4 managed lands.

5 And as I shared with you earlier, never
6 thought that was going to be a good idea. It was just going
7 to lead to increased altercations between whatever agency
8 would go in and do such -- such an operation. We thought it
9 was best for everyone involved, for the safety of the
10 officers, the safety of the public, leave them where they
11 were because they were just going to jump to another plot of
12 land to continue this -- to continue this protest.

13 Q. Okay. General Spellmon, are you aware of whether
14 Colonel Henderson dispatched Oahe Project representatives
15 to -- and other Corps personnel later -- to interface with
16 the State of North Dakota?

17 A. I am not aware of any specific incidents. I --
18 I'm not surprised that he would do that to -- I believe at
19 one point we put an officer in the state emergency operating
20 center, just to increase the -- our lines of communication
21 with -- with law enforcement.

22 Q. Right. And increasing lines of communication,
23 could you -- could you elaborate on what -- what you mean by
24 that?

25 A. Yes. I mean, just to improve our connectivity,

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1 our ability to communicate with the State. To always have
2 someone present that was within arm's reach that could get
3 ahold of a Corps leader, Colonel Henderson, myself or
4 others, to share information and to -- to enable better
5 cross-talk.

6 Q. Sure. And do you know who that individual was?

7 A. I don't recall the name of the officer.

8 Q. Right. Do you agree that those Corps individuals
9 who participated in the county -- or state emergency
10 operations center with respect to the DAPL protests were --
11 were -- were provided access by the State of North Dakota to
12 such meetings?

13 A. I'm not familiar with what meetings they were
14 allowed access to or not. I do believe that our cross talk
15 improved having people in there in a room at the EOC with
16 the other leaders.

17 Q. Okay. So you're not aware of any instance where
18 those Corps representatives were not allowed to participate
19 but rather they were allowed in some degree?

20 A. Sir, I don't know what meetings they were allowed
21 or not allowed to attend. I don't have that level of
22 detail.

23 Q. Okay. But there was a Corps presence in the state
24 emergency operations center, for example, I believe you
25 said, is that -- am I understanding that correctly?

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1 A. Yes, you're correct.

2 Q. Okay. Were you kept abreast of any of those
3 reports from the Corps individuals who did participate in
4 the state emergency operations center?

5 A. On the Corps side they would report back through
6 Omaha District and Colonel Henderson. And Colonel Henderson
7 was my primary means of -- of receiving information.

8 Q. And did he or his deputy, Lieutenant Colonel
9 Startzell ever provide you information that the Corps
10 representative received at such state emergency operations
11 center functions?

12 A. Yes. Routinely.

13 Q. Okay. Do you ever recall receiving a report
14 through that channel that the Corps representative was
15 denied or not shared information of any kind by the State?

16 A. I don't recall a scenario like that, no.

17 Q. Do you -- do you recall an individual by the name
18 of French Pope?

19 A. Yes.

20 Q. And could you identify Mr. Pope by -- by title and
21 function?

22 A. I recall he was an officer within the
23 Omaha District, and that's -- that's the best of my
24 recollection.

25 Q. Did he also carry the aide-de-camp designation?

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1 A. I'm not aware of French Pope carrying an aide-
2 de-camp destination.

3 Q. What does the aide-de-camp designation mean?

4 A. So as a general officer we have aide-de-camps that
5 help us on our -- our scheduling, on our travel, and in
6 taking notes from important meetings.

7 Q. And I don't mean this in any manner to diminish or
8 dimunize (sic) the nature of such position, but is it fair
9 to say such an individual is an administrative function?

10 A. Yes.

11 Q. Okay. And are -- are such people, aide-de-camps,
12 assigned to districts or do they work at a higher level in
13 the Corps?

14 A. Yes, so an aide-de-camp would be assigned to a
15 general officer. You would not find an aide-de-camp, say,
16 serving for a district commander at the colonel level.

17 Q. Okay. So Colonel Henderson would not have had an
18 aide-de-camp assigned to the Omaha District?

19 A. That's correct, he would not.

20 Q. Okay. And -- and your testimony was that
21 French Pope was not an aide-de-camp but a general military
22 officer in the Corps?

23 A. Yes, I remember him being an officer with the
24 Omaha District. I don't know if he ever served as an
25 aide-de-camp before or after that assignment.

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1 Q. All right. During the DAPL protest period?

2 A. That's correct. I -- I'm not aware.

3 Q. Okay. General Spellmon, do you know how long
4 protesters were on Army Corps of Engineers land in
5 North Dakota associated with the Dakota Access Pipeline
6 protest? How long were they there?

7 A. From my recollection, from early August of 2016, I
8 want to say extending to the February-March time frame of
9 2017.

10 Q. And with respect to the magnitude of protesters
11 during that period of early August 2016 to February-March
12 of 2017, which is approximately seven to eight months, if I
13 can tally it up that quickly, that those folks were on Corps
14 of Engineers property, do you recall, sir, how many
15 citations the Corps issued to those persons, if any?

16 A. I -- I don't know how many citations, if any,
17 Omaha District would have issued.

18 Q. Do you know if any were?

19 A. I -- I don't know.

20 Q. Okay. General Spellmon, while you were in your
21 capacity as -- as Northwest Division commander, are you
22 aware of anyone in the United States Government telling you,
23 directing, or suggesting to you that the Corps should not or
24 cannot issue citations to protesters on Corps property?

25 A. I do not remember anyone ever telling us that.

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1 Q. Okay. Can you address why the Corps did not issue
2 citations to any DAPL protesters on its property?

3 MS. ZILIOLOI: Objection. Misstates
4 testimony, assumes facts not in evidence.

5 BY MR. SEBY:

6 Q. General Spellmon, is there anything I can clarify,
7 my understanding of your testimony? I want to be precise
8 and I want to be accurate, and I just want to make sure I
9 understood what you said. Your counsel has objected to my
10 question, so what can I clarify for you, sir?

11 A. I would say I am not aware of whether or not the
12 Omaha District issued any -- any citations or how many they
13 may have issued.

14 Q. I understand. And now my question is, can you
15 tell me why the Corps did not issue any citations?

16 MS. ZILIOLOI: Objection. Misstates
17 testimony. Assumes facts not in evidence.

18 BY MR. SEBY:

19 Q. To your knowledge, sir, based upon your response
20 that you don't know whether any were issued, I'm asking a
21 different question. And that is, do you know why the Corps
22 didn't issue citations, if any? Was there a reason why that
23 was not done?

24 MS. ZILIOLOI: Same objections.
25

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1 A. I don't know the answer to your question.

2 BY MR. SEBY:

3 Q. Okay. In your tenure with the Corps, whether it's
4 your three years as the division commander or later now as
5 the chief of engineers of the United States Army Corps of
6 Engineers, did you ever allow anyone to build structures on
7 Corps property without a permit?

8 A. So I will answer it this way. We have hundreds of
9 encroachments on Corps property across the nation, and we
10 work through each one of these individually. I have
11 hundreds of them today.

12 Q. Okay. And what do you do with -- with those range
13 of circumstances where people have encroached on Corps
14 property but did not obtain first a permit to do so?

15 A. Right. So the general guidance is it all revolves
16 around intentionality. Was this an intentional
17 encroachment. So I have cases today that we're working
18 through where back when we surveyed a flood risk management
19 project, the surveys back then were not as accurate as they
20 are today, and so we have a number of cases around the
21 company where, yes, we have -- we have homes that are built
22 actually on a floodplain behind a Corps project.

23 So we have to work these individual cases
24 with each and every landowner on how we go about resolving
25 them. And there's a number of avenues that we take. That's

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1 an unintentional encroachment. For intentional
2 encroachments or trespassers, we work with those individuals
3 as well. At times we have to work with Department of
4 Justice or local law enforcement to get assistance in
5 removing an intentional encroachment.

6 Q. Okay. When those -- those intentional or
7 unintentional encroachments, did they involve discharging
8 waste on Corps property?

9 A. Are you saying do I have examples of that today --

10 Q. Yes.

11 A. -- where that happened? Yes.

12 Q. Are any of those encroachments people showing up
13 to camp en masse on Corps property, or are they structural
14 issues? People build a home and -- or a dock or some sort
15 of water feature, happens to be on Corps property because
16 they either did it intentionally or unintentionally. Do --

17 A. Yes, sir. I'm sorry.

18 Q. No, I apologize. I was just asking -- adding some
19 clarification. Do any of those instances involve the
20 discharge of large volumes of waste?

21 A. Yes, I'll give you an example of one that we've
22 been working through for the past several years on the Snake
23 River in Washington, where we have a rancher who takes
24 cattle and illegally grazes on Corps property and has even
25 disposed of carcasses of cattle on Corps property. So

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1 leaving waste behind.

2 So we work with -- we're working with this
3 rancher, we've been working with the Department of Justice
4 to -- to remedy this particular situation. That's an
5 example of many.

6 Q. Okay. Do any of your other examples involve
7 situations that -- where hundreds, if not thousands, of
8 campers just decided to set up shop on Corps property but
9 never asked for permission?

10 A. I'm not aware of any to the extent that we saw
11 during the Dakota Access protest.

12 Q. Anything remotely like it?

13 A. Yes.

14 Q. What instances would those be?

15 A. Spring-breakers on the Columbia River, again, out
16 in Washington and Oregon will camp on Corps property without
17 all of the necessary permits and our rangers and our
18 district commanders have to work to keep them safe, right,
19 and -- and then follow our regulations.

20 Q. And those -- those people are there for a spring
21 break typically defined by, what, a week, two weeks?

22 A. I would say several days. I wouldn't want to give
23 it an exact duration, but several days.

24 Q. Sure. Sure. And do you just let them be there or
25 do you pick -- pick up the phone and call the county sheriff

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1 and say we have some folks that are on our property, we
2 didn't give them permission, they're -- they're trespassers,
3 do something about it?

4 A. That's right. Many cases we have memorandums of
5 agreement with local law enforcement, and we try to resolve
6 these -- again, it's all in the interest of public safety,
7 we work with the local law enforcement there to resolve
8 these.

9 Q. Sure. At the time of the DAPL protest period,
10 again we're using this idea for purposes of discussion, the
11 protest was mid -- mid to -- mid to beginning of summer,
12 2016, to the same period 2017.

13 During that period, sir, do you recall the
14 existence of a memorandum of understanding with Morton
15 County with respect to people being on Corps Oahe Project
16 lands in the county where people show up and don't have your
17 permission to be here?

18 A. If I understand the question, it's my
19 understanding we did not have a memorandum of agreement or
20 memorandum of understanding for law enforcement support for
21 this -- these particular parcels of ground that were
22 occupied. I don't believe we had one.

23 Q. Were there any other such similar agreements with
24 any other county in North Dakota on the Missouri River?

25 A. I don't know if there were any others.

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1 Q. Okay. How about in South Dakota?

2 A. I -- I -- I don't know.

3 Q. Okay. Sir, it's -- I understand you're in
4 Washington D.C., and it's now early afternoon. Would you --
5 I want to respect the time zone difference between your and
6 my location. Would you appreciate a lunch break now or in
7 an hour?

8 A. Sir, I -- I would welcome a lunch break now, and
9 when you have an opportunity there are just two items that I
10 would like to clarify or correct for responses I gave you
11 earlier today.

12 Q. Would you be okay doing that now and then taking a
13 lunch break?

14 A. Yes, sir. That would be fine.

15 Q. Okay. Please go ahead. And thank you for
16 bringing that up. I'll --

17 A. It's just --

18 Q. I'll be quiet and let you tell me what you're --
19 what you're thinking.

20 A. Mr. Seby, early on this morning you asked how many
21 times I had met with counsel. I told you it was twice, it
22 was actually three times. I met twice last week, about a
23 two-hour session on Thursday and another two-hour session on
24 Friday, and then the third session was actually yesterday
25 afternoon.

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1 That was the first clarification I wanted to
2 make, it was three times, not two.

3 And the second, you asked about what
4 documents I had reviewed prior to this deposition, and I
5 shared with you my personal research. I went back and
6 looked at an op-ed that I had written and I went back and
7 reviewed Title 36.

8 During my meeting yesterday with counsel, I
9 also reviewed several additional documents.

10 Q. And without asking what you -- you discussed with
11 respect to those documents with your legal counsel, I am not
12 asking that, but will you tell me what documents, what
13 additional documents you're bringing to my attention
14 generally?

15 MS. ZILIOLO: I'm going to object on
16 attorney-client privilege and work product grounds and
17 instruct the witness not to answer as to the content of
18 documents that were reviewed with counsel.

19 MR. SEBY: Well, I just want to say again,
20 Ms. Zilioli, that I'm not asking about the content, I'm
21 asking what documents you reviewed.

22 MS. ZILIOLO: I understand. The objection
23 stands and I'm instructing the witness not to answer.

24 MR. SEBY: So noted on the record. All
25 right. How about -- how about the lunch break at this time?

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1 General, would 45 minutes be acceptable?

2 A. Yes, Mr. Seby, thank you.

3 MR. SEBY: Thank you, sir.

4 THE VIDEOGRAPHER: Okay. Going off the
5 record at 10:16.

6 (Noon recess taken.)

7 THE VIDEOGRAPHER: Okay. Please stand by.
8 Going back on the record at 11:06.

9 BY MR. SEBY:

10 Q. Good afternoon, General Spellmon, we're back on
11 the record after a lunch break.

12 A. Yes, good afternoon.

13 Q. We have provided your counsel with several
14 exhibits that a colleague of mine will put up on the screen
15 now that -- I'd like to go through them with you, if that's
16 okay.

17 A. Yes.

18 (Deposition Exhibit No. 344 was
19 marked for identification.)

20 BY MR. SEBY:

21 Q. All right. Thank you, sir.

22 The first one, Counsel, is Exhibit 344. And
23 these are how the documents were produced, and this is a
24 document that the State of North Dakota produced to the
25 United States, and it's an email forwarded to an individual

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1 at the State of North Dakota -- pardon me, the North Dakota
2 Association of Counties, to Sheriff Kirchmeier with Morton
3 County, and the email as forwarded is from Terry VanHorn,
4 who is with the United States Department of Justice in
5 Fargo, North Dakota.

6 And what it is is the attachment, if you
7 will, to the next page. General Spellmon, if we could zoom
8 in on that a little bit, and I'd ask you to please read it
9 and identify the document.

10 A. It just -- I'm sorry. I'm having a zoom issue
11 here.

12 Q. My colleague is zooming it. There, it's up on the
13 screen there?

14 A. I got it. Yeah.

15 Q. Can you see it okay?

16 A. I can now, thank you.

17 Q. Okay. Yes, sir. Please take a moment and review
18 it, notice the date and the stationery that it's on and the
19 title of the document, please?

20 A. Yes. Could you scroll down, please, to the third
21 paragraph. Okay. I've read all the way down to "statutory
22 framework and promote those goals."

23 Yes, Mr. Seby, I've read it.

24 Q. All right. Thank you. So what this -- Rachel, if
25 we could go back to the top there, a little bit of

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1 magnification. Thank you.

2 So this document, General Spellmon,
3 Exhibit 344 up on the screen that you've indicated you have
4 read is a -- a news release on Department of Justice
5 letterhead, and it's dated Friday, September 9 of 2016.

6 And the title of the document is a Joint
7 Statement from the Department of Justice, the Department of
8 the Army and the Department of the Interior regarding
9 Standing Rock Sioux Tribe vs. U.S. Army Corps of Engineers.
10 Do you see that?

11 A. Yes.

12 Q. Okay. General, you were earlier telling me that
13 there was a joint release that was the subject of
14 frustration brought to you by Colonel Henderson, the
15 district commander of the Omaha District of the Army Corps
16 of Engineers.

17 Is this the -- the joint statement that you
18 were referring to when we were speaking earlier this
19 morning?

20 A. Yes, it is.

21 Q. And is this the document that Colonel Henderson
22 was frustrated about?

23 A. Yes, it is.

24 Q. And -- and felt as though he was no given --
25 not -- if I understood what you said, and please correct me

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1 if this is not accurate, that Colonel Henderson was
2 frustrated because he was not aware of this prior to its
3 public release, is that correct?

4 A. That's correct.

5 Q. And -- and you, sir, I believe also said that you
6 were not aware of it prior to its public release, is that
7 accurate?

8 A. That's correct, I was also unaware.

9 Q. Okay. Do you know who -- who was involved in the
10 development of -- of the idea behind this and the subject
11 matter of the -- of the immediate release statement?

12 A. I don't. I just know from the Army perspective,
13 this would have been the staff in the assistant secretary of
14 the Army for Civil Works office.

15 Q. Ms. Darcy?

16 A. That's correct.

17 Q. And did you ever hear more about how this came to
18 be issued by -- by the assistant secretary of Civil Works?

19 A. No.

20 Q. Okay. Did Mr. Crook ever share any information
21 with you about the history and nature of this?

22 A. I don't recall Mr. Crook, it was more likely
23 Major General Jackson, again our deputy commanding general
24 for Civil Works at the time.

25 Q. And is it accurate to recall your testimony

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1 earlier that you got the impression at least that
2 Major General Jackson did not know of this prior to its
3 release?

4 A. I am not absolutely certain. If I recall, he was
5 also unaware of -- of the release.

6 Q. Prior to its being issued?

7 A. That's correct. That's my best recollection from
8 that -- that brief conversation we had.

9 Q. How about -- thank you. How about the -- given
10 your -- your position now, sir as the chief of engineers,
11 the -- is it accurate to say the chief of engineers at this
12 time, September, and I'm just realizing September's
13 misspelled in the release, but September 9 of 2016, would --
14 would the chief of engineers have been General Semonite?

15 A. Yes, General Semonite was the chief of engineers
16 at this time.

17 Q. Do you know whether -- whether the chief at that
18 time, Chief Semonite, was aware of this release prior to its
19 issuance?

20 A. Mr. Seby, can you still hear me?

21 Q. Yes, sir. Did you hear my question, sir? I -- I
22 know you had an assistant there, I didn't know if you could
23 hear me when I was talking.

24 General Spellmon, are you there?

25 MR. SEBY: For the record, we're

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1 experiencing -- the videoconference is having some technical
2 difficulties, we're pausing for them to be addressed, and a
3 question is pending. And I will wait for the witness to let
4 me know that he is in a position to respond.

5 THE WITNESS: Mr. Seby, I can hear you loud
6 and clear. To answer your question, yes, General Semonite
7 was the chief of engineers during the time of this joint
8 release.

9 BY MR. SEBY:

10 Q. Thank you. The question was also do you know
11 whether Chief Semonite was aware of this release prior to
12 its publication?

13 A. Mr. Seby, this is General Spellmon. Can you hear
14 me now?

15 Q. Yes, sir.

16 A. Yes, sir. To answer your question, yes,
17 General Semonite, who was the chief of engineering service
18 with the chief of engineers during the time of this joint
19 statement.

20 Q. I heard you say that now twice, but I've not heard
21 an answer to the second part of my question. And so I'm
22 concerned, sir, you may not have heard it.

23 A. I'm sorry. Sir, I'm really having a hard time
24 hearing you. Just need a moment.

25 MR. SEBY: Can we go off the record for a

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1 technical issue, please?

2 THE VIDEOGRAPHER: Yes, going off the record
3 at 11:15.

4 (Short recess taken.)

5 MR. SEBY: Let's go back on the record,
6 please.

7 THE VIDEOGRAPHER: Okay. Please stand by.
8 We are back on the record at 11:19.

9 MR. SEBY: We're back on the record after a
10 short break for technical difficulties with the connection,
11 audio and visual.

12 This is Paul Seby, counsel for the plaintiff.
13 I will resume the question posed earlier to General Spellmon
14 that may not have come across given the technical
15 circumstance.

16 BY MR. SEBY:

17 Q. General, the question is, is with respect to
18 Exhibit 344 that remains on the screen and that we have been
19 discussing, I understand that you just confirmed that the
20 chief of the Army Corps of Engineers at the time of this
21 release from the Department of Justice, Exhibit 344, the
22 chief was Todd Semonite.

23 And the question that remains pending that I
24 believe you may not have heard, sir, is do you know, did you
25 ever know or understand that Chief Semonite was aware of

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1 this release prior to its publication?

2 A. I -- I -- I don't know if he was aware. Again, I
3 was working this particular set of issues directly with
4 Major General Jackson. I don't know if General Semonite was
5 aware.

6 Q. Okay. Got it. All right. Do you know, sir, that
7 as of the date of this letter, September 9th, 2016, that
8 there were -- whether there were protesters located on Army
9 Corps of Engineers-controlled, managed properties in the
10 Oahe Project in North Dakota?

11 A. Yes, I believe there were protesters present at
12 this time.

13 Q. On Corps land?

14 A. Yes.

15 Q. Okay. And I believe you indicated Colonel
16 Henderson brought this to your attention and was
17 frustrated, if I recall what you said correctly. Why was
18 Colonel Henderson frustrated with this release?

19 A. It wasn't just Colonel Henderson. I -- I shared
20 in his frustration. Our protocol for messages like this
21 would be to inform what we call our vertical chain, our
22 entire chain of command so that we are all informed of what
23 our higher headquarters was working with other agencies.
24 We -- we just didn't know. We were -- we were in the dark.

25 Q. Is it fair to say you were blindsided by this or

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1 caught off guard?

2 A. We were surprised. It just -- it just did not
3 follow our -- our normal protocol for information flow.

4 Q. And that would be the normal Corps of Engineers
5 protocol?

6 A. I would say it's normal Army protocol, not just
7 the Corps of Engineers.

8 Q. Yeah. Do you know why normal protocol of the
9 Department of the Army was not followed with respect to this
10 release which represents a position of the Army Corps of
11 Engineers?

12 A. No, I --

13 MS. ZILIOLO: Objection, calls for
14 speculation.

15 A. I -- I don't know.

16 (Deposition Exhibit No. 345 was
17 marked for identification.)

18

19 BY MR. SEBY:

20 Q. Okay. Thank you, sir. All right. If we could go
21 to Exhibit 345. We're going to go over a few emails this
22 afternoon, General, that are what I call compound emails.

23 They've got -- and they were produced to the
24 State of North Dakota this way by your counsel, so I -- I
25 just want to explain why we're doing that, as that's how I

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1 received them, and this is a two-page email. But the first,
2 there you go, the first email in the chain begins on page 2.

3 If we could zoom in. And then if I could ask
4 you, sir, to please read the beginning email and then the
5 next three emails that -- that follow. And let me know when
6 you're done.

7 A. Yes, sir. I -- I finished this page.

8 Q. Okay. Rachel, if -- here we go. And here's the
9 next one.

10 A. Okay. Could you scroll up, please?

11 Okay. If you could scroll all the way up,
12 please.

13 Yes, sir. I've finished reading.

14 Q. All right. If we could go back to the -- the
15 beginning of this email chain, the beginning email at the
16 bottom is from you, sir, to Lowry Crook and Donald Jackson
17 and David Ponganis. Who is Mr. Ponganis?

18 A. Mr. Ponganis was my programs director, a member of
19 my staff at the Northwest Division.

20 Q. All right. And your note to Mr. Crook was
21 "Regarding," it says, "Sir - regarding, your 1415 call with
22 Governor Dalrymple." Do you recall the context why you
23 initiated this communication?

24 A. I don't recall the exact context. My recollection
25 is he had a phone call later in the day with the governor

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1 directly, and he had several questions. I don't recall how
2 they came to me, but these were my responses to his
3 questions as -- as he prepared for that phone call.

4 Q. Okay. So had Mr. Crook called you and said I'm
5 going to be talking to the governor, can you help me out on
6 a couple of things? How did you know to email him with
7 these specifics?

8 A. Yes, sir. I don't recall if it was a direct call
9 from Mr. Crook, a member of his staff or General Jackson, it
10 could have been any of those. I don't recall where I got
11 the questions, but I -- I knew I owed him a response prior
12 to his engagement with Governor Dalrymple.

13 Q. Okay. General, the first -- first of the four
14 numbered items that are in your email says, "We've had no
15 contact from any elected officials since the Judge's ruling
16 and release of the interagency statement."

17 Is the interagency statement that you are
18 referencing to Mr. Crook the September 9th joint statement
19 by the Department of Justice, Interior and the Department of
20 the Army dated September 9th?

21 A. Yes, that's the statement I'm referring to.

22 Q. Okay. Thank you. Then the second of your report
23 says, "We've also had no contacts from the applicant." Who
24 are you referring to?

25 A. Sir, I'm referring to Energy Transfer Partners,

1 Dakota Access, the -- the team building the pipeline.

2 Q. Okay. Is it possible that you are also referring
3 to the applicant for the special use permit or is that not
4 correct?

5 A. Sir, to my best recollection this I'm referring to
6 here is the applicant for the easement underneath Lake Oahe,
7 this would be the Dakota Access.

8 Q. Got it. Okay. All right. And then the next
9 email in the chain is Mr. Crook just acknowledging your
10 email saying, "Thanks Scott, that's very helpful. Has there
11 been any more development on the special use permit
12 application that is under review and that he has previously
13 called Ms. Darcy about?" Did I read that accurately?

14 A. Yes.

15 Q. And so he's asking about the special use permit
16 application. Would that be the Standing Rock Sioux Tribe
17 application for special use permit?

18 A. Yes, this was the special use permit that was
19 being considered for the land south of the Cannonball river.

20 Q. Okay. And then the last part of that sentence,
21 "and that he has previously called Ms. Darcy about," is that
22 a reference to the governor having previously called
23 Jo-Ellen Darcy, the assistant secretary of the Army for
24 Civil Works, is that the context of that statement?

25 A. Mr. Seby, that's how I read it. I -- I am not

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1 personally aware of that phone call, though, but that's how
2 I read this -- this question.

3 Q. Okay. Sure. And if we could go up to the next
4 email on the string, the third one, you responded to,
5 replied all to Mr. Crook and Donald Jackson and
6 Mr. Ponganis, and then I -- you added some individuals, or
7 actually Crook added individuals, and so your reply all went
8 to them all.

9 And your -- your note to Mr. Crook, et al.,
10 same date, September 12, 2016, says that, "Sir - The
11 District Commander, Colonel John Henderson, has not yet
12 taken action on the application." Is that a reference to
13 the special use permit?

14 A. Yes.

15 Q. Sought by the Standing Rock Sioux Tribe?

16 A. Yes.

17 Q. Okay. And your next sentence says, "The most
18 significant issue we are dealing with is the information
19 provided on the new application does not match facts on the
20 ground," period.

21 Do -- do you know what you meant by saying
22 "the new application"? That suggests, that new versus old
23 distinction, it -- what -- what, I just want to understand
24 what you were meaning by using that choice of words?

25 A. From -- from my best recollection, the district

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1 was working with Standing Rock, and the initial application
2 was -- left out a lot of detailed information that we needed
3 to work through this -- this process. And this was the
4 Standing Rock's next attempt to -- to provide a more
5 accurate description of what they were asking for.

6 Q. Okay. And then -- and then you go on to say that
7 new application, the next attempt, "Does not match facts on
8 the ground." What did you mean -- by that, sir?

9 A. Right. So what Colonel Henderson had shared with
10 me was that there were more people than the application had
11 asked for, and that we were already seeing some littering
12 ring and some destruction of -- of -- of land.

13 And he wanted to have this conversation
14 further with Standing Rock, and I understand the chairman,
15 obviously, before going final.

16 Q. Yeah. Okay. And then the next sentence in this
17 third email on the chain from you to Mr. Crook says, "For
18 example, at the sites there is ongoing littering, dumping,
19 destruction of grazing land, unauthorized structures, and
20 several hundred more people above and beyond what the
21 application addresses."

22 I -- I -- I understand that now explains
23 your -- your -- your statement about the inconsistencies.

24 You go on to say, "Colonel Henderson is
25 continuing to work through these issues with the applicant."

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1 At this point in time, we would like to tie the way ahead on
2 the Special Use Permit with the overall way ahead as
3 described in the interagency memo."

4 What is the interagency memo that you're
5 referring to? Is that the September 9 joint statement we
6 were talking about that's Exhibit 344?

7 A. Yes, that's what I'm referring to.

8 Q. Okay. And then the final email in this chain
9 is -- is at the top there, if we could go up there, Rachel,
10 please.

11 And, General, you've read this, if I
12 understand correctly. I just want to confirm.

13 A. Yes, I've read it.

14 Q. Okay. So this final element of the -- of this
15 chain on Exhibit 345 is a note back to you and the group
16 from Mr. Crook saying, "Thanks Scott. I just got off the
17 phone with the governor. He asked about the statement but
18 understood we were not in a position to give him additional
19 specifics on our plans at this time."

20 Is the statement that this references, do you
21 think Mr. Crook means the September 9th joint statement?

22 MS. ZILIOLO: Objection, calls for
23 speculation.

24 A. I believe that's what he was referring to.

25 BY MR. SEBY:

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1 Q. Okay. And Mr. Crook says, "We were not in a
2 position to give him additional specifics on our plans at
3 this time." What -- what plans is he referring to?

4 MS. ZILIOLO: Objection, foundation.

5 BY MR. SEBY:

6 Q. To the extent you know, sir.

7 A. I think to my -- my best recollection, he was
8 referring to plans at the Department of the Army level, the
9 Department of Justice and the Department of Interior that
10 were mentioned in their joint statement.

11 BY MR. SEBY:

12 Q. Okay. Were -- were there more plans or more
13 specific aspects of the plans than articulated in the
14 September 9th statement?

15 A. Not that I was aware of. As I mentioned earlier,
16 Colonel Henderson and I were -- were both surprised about
17 the statement and -- and the content so I didn't -- I didn't
18 know.

19 Q. Got it. Okay. And Mr. Crook, he goes on to say,
20 "He was -- " "he," we're talking about the governor of
21 North Dakota, Jack Dalrymple, right?

22 A. Yes.

23 Q. "He," the governor, "was more focused on
24 reiterating his concern that protesters are continuing" --
25 or "are considering more permanent structures on Corps

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1 property, and he," the governor, "again requested that we,"
2 the Corps, "not allow that to happen or allow the camp to
3 remain for an indefinite time." Did I read that correctly?

4 A. Yes.

5 Q. And he goes on to say, "I told him," the governor,
6 "that the special use permit was still under review at the
7 Corps, and that no decision has been made on it at this
8 time."

9 "The governor also said that as the timeline
10 extends, he," the governor, "will be asking the Federal
11 Government for reimbursement for his," the governor's, "law
12 enforcement costs."

13 Finally, "He," the governor, "asked that we,"
14 the Corps, "convey to DOJ the law enforcement challenges
15 that he," the governor, "is facing, and that he," the
16 governor, "believes he needs them to send more U.S.
17 Marshalls (sic) to assist."

18 Do you know, did Mr. Crook or anyone in the
19 Corps or the Department of Army convey the governor's
20 request as Mr. Crook states it here?

21 A. I -- I do not know.

22 (Previously marked Exhibit No. 138

23 was introduced for the record.)

24 BY MR. SEBY:

25 Q. Okay. All right. I'd like to turn to

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1 Exhibit 3 -- pardon me. Pardon me. I'd like to use
2 Exhibit 138, which is a prior exhibit, General Spellmon,
3 that's coming up on the screen, that was an exhibit that was
4 used in the deposition of Ms. Eileen Williamson, who is a
5 public affairs officer in the Omaha -- or at the time was a
6 public affairs officer in the Omaha District.

7 And this is a two-part email. The first part
8 begins on the next page, if we could go there. And if we
9 could, first of all, it's an email from James Startzell, who
10 I understood you confirmed earlier as the deputy district
11 commander for the Omaha District sent -- sent an email to a
12 group here, I'm not going to identify everybody, but it's
13 dated September 22nd of 2016.

14 And I would just note, in the group to whom
15 the email is addressed, your name and Mr. Henderson's,
16 Colonel Henderson's name are both present. Are you seeing
17 that in the group there?

18 A. Yes.

19 Q. Okay. And the subject line reads, "DAPL Daily
20 Update," September 22nd, 2016. And Colonel Startzell says
21 to you, the group, "Update for today follows:"

22 The first line is with regard to, he's
23 reporting that the State of North Dakota Emergency
24 Commission voted the day prior to this email to borrow up to
25 \$6 million from the state-owned Bank of North Dakota to

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1 support law enforcement efforts related to the Dakota Access
2 Pipeline protests.

3 It -- and then Colonel Startzell says after
4 he reports that, "It is assumed that the state will attempt
5 to recoup their costs from the federal government at some
6 point since they," the State of North Dakota, "see this as
7 largely a federal issue and on federal lands."

8 Is this the first time you'd heard from
9 anybody in your chain of command above or below that kind of
10 information?

11 A. I believe I would have heard it earlier from
12 Mr. Crook's email where he mentioned that -- this very fact
13 that they would seek reimbursement from the federal
14 government for law enforcement costs. The governor
15 mentioned that to Mr. Crook in their phone conversation --

16 Q. Got it.

17 A. -- I believe two or three days prior to this.

18 Q. Okay. Okay. Then the second update that
19 Colonel Startzell is providing to you and Colonel Henderson
20 and a large number of other individuals is that, "The North
21 Dakota Department of Health has received a complaint of
22 illegal waste management practices at the DAPL protest
23 encampment."

24 Do you think that this is Colonel Startzell's
25 reporting on circumstances occurring on Corps land?

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1 A. Yes.

2 Q. Okay. He goes on to say, "There are reports and
3 photos of burn pits/waste lagoons, which is an apparent
4 violation of North Dakota solid waste management laws and
5 rules, and the state is concerned that the sandy soil may
6 allow groundwater impacts. We," the Corps, "will need to
7 consider mitigating/fixing these impacts as part of a move
8 of personnel to permitted area."

9 What does that -- that last sentence, "We
10 will need to consider mitigating/fixing these impacts as
11 part of a move of personnel to permitted area"? Can you --
12 do you have an idea on what that refers to and what he's
13 talking about?

14 A. I do. At the time there was discussion of moving
15 the folks that were on the unleased property -- I'm -- I'm
16 sorry -- The unpermitted property north of the Cannonball to
17 a camp south of the Cannonball that was going through the
18 special use permit process.

19 There was also discussions with
20 Chairman Archambault and Colonel Henderson on potential
21 sites on Standing Rock reservation. Those did not come to
22 fruition later, but we may have been in the early planning
23 phases at this time and that's what this is referring to.

24 Q. What is the permitted area that Startzell is
25 talking about?

1 MS. ZILIOLO: Objection, foundation.

2 BY MR. SEBY:

3 Q. To the extent you know, sir.

4 A. To the best of my recollection, this is the area,
5 the camp south of the Cannonball that we referenced the
6 pending special use permit in the earlier email.

7 Q. Startzell uses the -- the phrase and text -- and
8 context as "permitted area," as though an area had been
9 permitted. Is that how you read it?

10 A. I don't read it that the area was already
11 permitted, no. Could have been that it was still pending a
12 permit.

13 Q. Okay. So it's ambiguous, maybe, then, right?

14 A. Yes, sir. To me it is.

15 Q. Okay. Me too. Third point of information, the
16 update is, says, "We," the Corps, "spoke with the lessee,
17 Mr. Meyer." Is that the person that you were talking about
18 earlier that held the lease on the area north of the
19 Cannonball river on Corps property?

20 A. Yes.

21 Q. Okay. And Startzell goes on to say, Meyer was
22 "unequivocal in saying that he," Meyer, "will not terminate
23 his lease. He," Meyer, "also clarified that he," Meyer,
24 "did sell his northern lands to DAPL for construction but is
25 allowed to keep his livestock on these northern lands and

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1 has an option to re-purchase the land from DAPL in 1 year."

2 Okay. Number 4, "Omaha District confirmed
3 there are no law enforcement contracts in place with Morton
4 County (only Burleigh County which is farther north and
5 across the river)."

6 Is this the kind of memorandum of agreement
7 and understanding that you were referring to generally
8 earlier?

9 A. Yes, and I -- I remember asking the district this
10 question at this time frame whether or not we had a
11 memorandum of agreement with any law enforcement in -- in
12 the county, and this was his response.

13 Q. Yeah. Okay. Then the fifth point of information
14 is, "Correspondence with SRST's attorney and insurance
15 company indicates they are attempting to increase their
16 insurance level to meet the requirements of the Special Use
17 Permit." What's he -- what's Startzell talking about there?

18 MS. ZILIOI: Objection, foundation.

19 BY MR. SEBY:

20 Q. To the extent you know, sir.

21 A. I -- I believe he is talking about the pending
22 special use permit for the land that was south of the
23 Cannonball.

24 Q. Okay. Okay. All right. So this email that we're
25 discussing is dated September 22nd, 2016. I want to ask to

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1 your knowledge, General, what's happening on the Corps
2 property at this time, to your knowledge? Are there -- are
3 there encampments of people on Corps property at this point?

4 A. Yes.

5 Q. Are there structures of any kind built on Corps
6 property at this time?

7 A. I believe there were -- there were temporary
8 structures as I mentioned earlier. Tents, possibly
9 vehicles, people living in mobile homes or campers, yes.

10 Q. RVs, that kind of thing?

11 A. Yes.

12 Q. Were there fires, campfires or burn fires at this
13 time?

14 A. I think that's reasonable to assume, but I don't
15 know specifically about campfires.

16 Q. And what about human or animal or cooking waste,
17 was -- do you think that was present?

18 A. Yes, that had come up in our reporting.

19 Q. Yeah.

20 A. Those things were present.

21 Q. Okay. Okay. If we could go to Exhibit 18, which
22 is in the package provided to your counsel yesterday,
23 Rachel, if you'd put that up on the screen, please.

24 MS. HYMEL: Give me one second, please.

25 MR. SEBY: Yes, uh-huh.

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1 MS. HYMEL: I'm having an issue. I need to
2 fix it a different way. Give me one more second.

3 MR. SEBY: Thank you. Exhibit 18 is --

4 Oops, no? Rachel, that's not it. It's U.S.
5 Corps production document 00024035.

6 MS. HYMEL: Did you say -- did you say 18 or
7 318?

8 MR. SEBY: 18. 1, 8.

9 MS. HYMEL: Can we take a break one second?

10 MR. SEBY: Ms. Zilioli, would you mind going
11 off the record for our technical issue?

12 MS. ZILIOI: No problem.

13 MR. SEBY: Thank you.

14 THE VIDEOGRAPHER: Okay. Going off the
15 record at 11:50.

16 MR. SEBY: All right.

17 (Respite.)

18 THE VIDEOGRAPHER: Going back on the record
19 at 11:52.

20 BY MR. SEBY:

21 Q. General Spellmon, there is a -- an exhibit just
22 placed up on the screen, it's Exhibit 318, a -- an exhibit
23 that was used in a prior deposition.
24
25

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(Deposition Exhibit No. 318 was
marked for identification.)

BY MR. SEBY:

Q. This document is produced to the State of North Dakota from the Army Corps of Engineers. And so I would like to ask you to read it. It is -- it is -- it is a five-part email chain. Fortunately, though, sir, the portions of the components of the chain are -- are short. So could you please go to the first one, which is at the end of the document?

A. Okay. I see the signature block.

Q. So this -- this first email is from a gentleman named Joel Rostberg, who -- his title on the -- on the exhibit is Assistant Emergency Manager Morton County.

And Mr. Rostberg sent this email on September 23rd, 2016, and there are a number of -- of individuals on the distribution. I will note and you can read it, skim it yourself, but the -- the group to whom he is sending this, which is an OPORD, operational period September 23 through September 24, 2016.

And it's -- it's the distribution group starts with Sheriff, Morton County, and then there are individuals in the North Dakota Highway Patrol, and there are numerous individuals that have USDOJ email addresses. And other counties in North Dakota.

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1 And many people with the State of
2 North Dakota government, different agencies. And there's
3 people from the FBI with similar prefixes in their email
4 addresses and -- and so forth.

5 Just a very large distribution group that
6 Mr. Rostberg is communicating with. And one of the
7 individuals that received this email was a fellow named Todd
8 Lindquist, who has an Army Corps email address. Do you know
9 Mr. Lindquist?

10 A. I do not know Mr. Lindquist.

11 Q. Okay. So coming up the email chain, Mr. Lindquist
12 with the Corps, looks like he's in the -- in the Omaha
13 District, he sends this email of Mr. Rostberg's to -- with
14 the OPORD report attached, to Keith Fink. Do you know
15 Mr. Fink?

16 A. I do not know Mr. Fink.

17 Q. Okay. And -- and -- and Corps, Corps person
18 Lindquist sends to Corps person Fink, "Keith, I have not" --
19 "I haven't gotten a chance to read the attached OPORD
20 regarding DAPL. I'm currently busy reviewing the 776 page
21 ECP I'm supposed to sign today for the land transfer to
22 Three Affiliated Tribes. Todd."

23 And then Mr. Fink in response to that sends
24 the email from Mr. Rostberg and the attached OPORD report to
25 Colonel Henderson and Thomas Tracy, who I understand is the

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1 district counsel for the Omaha District, and to Colonel
2 Startzell.

3 And Mr. Fink's forwarded email says, "The
4 attached is a law enforcement update on the DAPL Protest
5 Camps."

6 And to that, Mr. Startzell, Colonel Startzell
7 responds to, "Thanks, Keith," and continue to copy Colonel
8 Henderson and the Corps district counsel.

9 You were not on this email, General, but at
10 that time, September 25th, 2016, Colonel Startzell tells
11 Colonel Henderson -- Lieutenant Startzell tells
12 Colonel Henderson that the information in OPORD 33 from the
13 County sent to the large group that we talked about,
14 confirms the commander's assessment that the camps are
15 growing out of Standing Rock Sioux Tribe's control, and the
16 chairman is probably going to try to use the SUP as a way to
17 regain control of what he sees as legitimate protesters.
18 Did I read that correctly?

19 A. Yes.

20 Q. Thank you. General Spellmon, were you aware that
21 by September 25, 2016, it was the United States Army Corps
22 of Engineers position that the camps had grown out of the
23 Standing Rock Sioux Tribe's control?

24 MS. ZILIOLOI: Objection, misstates evidence.

25 A. Yes, I -- I -- this -- this email, although I was

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1 not on it, the assessment here does not surprise me.

2 BY MR. SEBY:

3 Q. Okay. General Spellmon, was it only the Standing
4 Rock Sioux Tribe's responsibility to keep control of the
5 protests on Corps property?

6 A. No, this -- this was a shared responsibility among
7 a number of agencies.

8 Q. And who would those -- who are you referring to?

9 A. I think certainly the Tribe, I think local and
10 state law enforcement, the governor had reached out to his
11 National Guard to assist in this matter, and certainly
12 everything we could do within our authority to assist.

13 Q. And your -- your answer pertains to keep control
14 of the protests on Corps land?

15 A. I -- I think keep control of the more aggressive
16 protests, whether they originated on Corps land or
17 originated anywhere.

18 Q. Okay. Did the Corps or federal law enforcement
19 take any responsibility at this time for what was happening?

20 A. Sir --

21 MS. ZILIOLO: Objection, ambiguous.

22 THE WITNESS: I don't know what you mean by
23 take responsibility.

24 BY MR. SEBY:

25 Q. Address the circumstances acknowledged to be

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1 occurring on Corps property at this time, September 25,
2 2016?

3 A. We -- we certainly acknowledged the situation we
4 were all facing, and were working with all of our partners
5 on -- on a way forward.

6 Q. Okay. Do you have any reason to disagree with
7 your Corps colleagues that the camps on Corps lands were out
8 of control by late September 2016?

9 A. Just reading this, I don't believe that Major
10 Startzell refers to only Corps property. I'm -- I'm -- I'm
11 sorry, Mr. Seby. Can you restate your question?

12 Q. Yeah. Do you have any reason to disagree with
13 your Corps colleagues that the camps were out of control by
14 late September 2016?

15 A. No, I would not disagree with their assessment.

16 (Deposition Exhibit No. 346 was
17 marked for identification.)

18 BY MR. SEBY:

19 Q. Okay. All right. If we could go to Exhibit 346,
20 please, and this is after -- we're in luck, this is a short
21 email chain, three pieces.

22 The first is at the bottom there from Rita
23 Aguilar, dated October 11, 2016, addressed to Colonel
24 Henderson and copied to Mr. Crook and Javier Guzman, and the
25 subject line says, "Connecting DOJ Community Relations

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1 Service Director Montero with Army Corps District Commander
2 Henderson."

3 And the text of the email reads, "Colonel
4 Henderson, we wanted to follow up with our efforts to
5 connect you with the head of our Community Relations Service
6 in case there are ways we might be helpful "on the ground in
7 North Dakota, especially as you try to make headway with the
8 Chairman this week."

9 Then in response to Ms. Aguilar's email, and
10 I would note Ms. Aguilar is identified on this email as a
11 Deputy Associate Attorney General, Office of the Associate
12 Attorney General, United States Department of Justice. And
13 to Ms. Aguilar's email, a gentleman named Paul Monteiro
14 responds and replies all. See that above?

15 A. Yes, I can see that.

16 Q. And so even though Ms. Aguilar's email was
17 addressed to Colonel Henderson, Mr. Monteiro is the first to
18 reply all and says, "Many thanks, Rita. Colonel Henderson:
19 Honored to make your acquaintance. Please allow me to loop
20 in CRS," which I believe stands for Community Relations
21 Service, "Associate Director Theresa Segovia, who is leading
22 our efforts in North Dakota."

23 And "our efforts" I think is a reference to
24 the DOJ community relations group. What did -- do you know
25 about this? What does this involve?

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1 MS. ZILIOI: Objection, foundation.

2 A. I -- I -- I don't know the details behind the CRS
3 efforts.

4 BY MR. SEBY:

5 Q. Okay. I understand. So you don't know the scope
6 of what -- what's being discussed here?

7 A. I -- I do not know the details behind what the CRS
8 capabilities or any plans that they had in the state at this
9 time. I don't know.

10 Q. Okay. So this didn't ring any bells with you is
11 what I understand you're saying, right?

12 A. I could see that it was forwarded to me on
13 October 11th, but I don't recall any additional detail.

14 Q. Yeah. And that's why I asked, because Mr. Crook
15 forwarded it to you and to Mr. Jackson, and said "FYI." But
16 you didn't know what information you were being forwarded.
17 What -- what a context was or what it meant, is that fair?

18 A. It was helpful to know that Department of Justice
19 had an effort underway that might be helpful to us. But
20 again, I can't speak to the details behind it.

21 (Deposition Exhibit No. 347 was
22 marked for identification.)

23 BY MR. SEBY:

24 Q. Okay. Got it. If we could go to Exhibit 3:47,
25 please. This is one of the longer emails, it may be the

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1 gold medal winners of the emails, so I apologize for the
2 length, but again note that this is how the document was
3 produced to us by your counsel.

4 So it's a six-part email chain. If we could
5 go to the bottom, please. And the first in the chain is
6 from Major General Donald Jackson to you, no CCs, and the
7 subject says, "DAPL Update. Scott, can you provide an
8 update to John's last message. Interested in the outcome of
9 the Tribal Elder decision on camp support and the proposed
10 winter move to the reservation. Chief has a call with
11 Senator Hoeven tomorrow, thank you" -- "thanks, Ed." And
12 it's dated October 13, 2016.

13 General Spellmon, do you know what
14 Mr. Jackson is telling you, Donald Jackson is telling you
15 with regard to Tribal Elder decision on camp support and the
16 proposed winter move to the reservation?

17 A. Yes.

18 Q. Where are -- what does this involve?

19 A. This was the one option that I mentioned earlier
20 that Colonel Henderson was working with Chairman
21 Archambault. The chairman had -- we had identified I
22 believe three locations that were suitable with available
23 services that were a better location to put folks that were
24 camping on -- on the land north of the Cannonball and bring
25 them onto the Standing Rock reservation.

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1 And from my recollection of conversations
2 with Colonel Henderson, while Chairman Archambault was
3 supportive of this -- of this idea, the Tribal Council was
4 less supportive, and I believe that's the reason this did
5 not in the end come to fruition, this option.

6 Q. Okay. So Major General Jackson is asking you for
7 an update about that, right? How did the Tribal Elder
8 decision turn out?

9 A. Yes, so he's asking me to provide an update to my
10 boss, General Semonite, before his call with Senator Hoeven.

11 Q. Got it. And so the next email on the chain is
12 from you, sir, back to Donald Jackson with a report. Could
13 you read that, please?

14 A. Would you scroll up, please? Okay. Thank you.

15 Okay. I've read it. Thank you.

16 Q. Okay. So we're talking about your response to
17 Donald Jackson, October 13th, 2016 and nobody else on the
18 chain. You say, "Sir - in short, there has been no
19 significant movement of logistics/camp support, or
20 personnel, to reservation property." That's -- that's your
21 summation of -- of his question about how's it going, right?

22 A. That's correct.

23 Q. And then you offer "A few supporting notes," and
24 report that, "The Chairman's engagement with the community
25 of Cannonball residents did not go well last night."

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1 So that's what you meant by the outcome that
2 you were -- you were referencing in the just prior email.
3 The idea, the option of moving people on the northern Corps
4 camps, Corps property camps to the Standing Rock
5 reservation, it just, it didn't, it didn't advance as an
6 idea at this point, right?

7 A. Yes. That -- that's correct. And specifically
8 what I'm getting at here for this particular engagement,
9 what I recall was that there were more protesters in the
10 room, that the chairman was attempting to engage with more
11 residents of -- of -- of the city of -- of Cannonball, and
12 it did -- it did not go well as I articulated here.

13 Q. Mm-hmm. Yeah. Is Cannonball on the Standing Rock
14 Sioux Tribe reservation?

15 A. I would have to look at a map. I -- I don't
16 recall. I know if it's not on the reservation, it's
17 certainly nearby.

18 Q. Okay. What's the connection between the prior
19 email, Major Jackson's asking you about the Tribal Elders
20 convening, and this meeting with Cannonball residents. Are
21 they one and the same or different?

22 A. From my recollection, I'm talking about two
23 different sets of engagement. This -- this -- this --
24 current email that we're looking at was with the village,
25 the city of Cannonball, and another set of engagements

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1 separately. I said Tribal Elders, probably better to say
2 the Tribal Council that the chairman was also engaging with
3 to build support for this -- for this particular option.

4 Q. So I used the word Tribal Elder because that's
5 what Major Jackson asked you about. Was he wrong to use
6 that phrase and reference it as an outcome of their
7 decision?

8 A. No, I -- I -- I understood what he meant. I don't
9 think he was wrong to use that phrase.

10 Q. Okay. And if we could go up in the chain, you --
11 you then replied to Donald Jackson with an update that you
12 got a call from Dakota Access that they're going to most --
13 most likely resume work within the 20-mile zone tomorrow,
14 and they're mobilizing archeological monitoring teams to
15 support this effort.

16 And then it seems that the next email in this
17 chain is from Donald Jackson forwarding your communications,
18 the three prior communications with -- between you and
19 Donald Jackson to Lowry Crook and Jo-Ellen Darcy and Todd
20 Semonite, the chief of the Corps of Engineers and the
21 assistant secretary of the Army for Civil Works, Ms. Darcy,
22 and her deputy, Lowry Crook. Do you see that?

23 A. I don't. It's scrolling.

24 Q. Yeah, I'm sorry. Pardon me. I didn't mean to get
25 ahead of you. It's -- it's right there at the bottom is --

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1 is the way this email is formatted, again from your counsel,
2 it's -- it's right there.

3 A. Yes, I see where General Jackson forwarded it.

4 Q. And he says, "Madame Secretary and Chief. Wanted
5 you both to have this in advance of your engagements
6 tomorrow." Do you know what engagements he is referring to?

7 A. I believe he's referring to the engagement General
8 Semonite had scheduled with Senator Hoeven.

9 Q. Is that a meeting?

10 A. I don't know if it was a meeting or a phone call.

11 Q. Okay. And so was Ms. Darcy and Mr. Crook also
12 going to participate in that, to your understanding?

13 A. I -- I don't know.

14 Q. Okay. And then, interesting, the chief,
15 Todd Semonite, in the next email up then forwards that email
16 to you and Major Jackson and copies Mr. Crook.

17 And the subject line changes in him -- his
18 doing so. Meaning the chief of engineers, Todd Semonite,
19 changed the subject line to "DAPL update," from "DAPL
20 update" to "Lieutenant General Semonite concern: DAPL
21 Update."

22 And it's an email then that begins with a
23 paragraph that says, "Lowry: I am ready to get personally
24 involved here - current plan is not working - not sure
25 anything has gotten better since our last meeting with

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1 Senator Hoven (sic), if anything, situation as degraded. Is
2 there a master strategy - would like to know it. I see this
3 with high potential for increased conflict. Please let me
4 know what I can do to assist in getting a solution. Can't
5 sit on this much longer without a FEASIBLE plan in a timely
6 manner." And "feasible" is all caps.

7 And then there's a break and the same
8 message, it says, "Ed and Scott," Ed being Donald Jackson
9 and Scott being you, sir, and it says, "Tracking all... this
10 is just as we discussed a few days ago. We need to keep
11 thinking about" -- "through our responsibilities if we get a
12 worst case option (more arrests/no movement of camps" --
13 "off camps/company starts working the 20 mile area/more
14 arrests and injuries/concrete and structures go up on
15 northern and southern camp in prep for winter/national rally
16 to cause of Indians within three weeks of election."

17 This email, by the way, is October 3, 2016.
18 "Would like to huddle tomorrow before Hoven call. Please
19 help me understand a few issues."

20 Then Chief Semonite lists five issues, each
21 of them identified in all caps. Number 1, all cap,
22 "EASEMENT. What is our talking point on why the easement
23 hasn't been approved given the two legal decisions? Ed told
24 me yesterday that we sent the request to approve the
25 easement to the ASA already - I will be honest and say that

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1 if asked. Can't be" -- "pretend to be studying this if we
2 aren't."

3 I'll skip number 2.

4 Number 3, all caps, "TRESPASSING: What is our
5 position to Congress why USACE has allowed trespassing and
6 camping on government land on the north side... effectively
7 condoning the tribes to violate the law both on our land as
8 well as other lands? When is USACE going to do something to
9 get this under control - while many move to other" -- "while
10 many might move to other camps, some will stay to embolden
11 the effort? Is there some event that will cause us to ask
12 Sheriff to enforce the law?

13 Number 4 issue, all caps, "FEDERAL MONEY:
14 While not our problem - am sure Senator H," Hoeven, "will
15 push me on why hasn't government provided any relief to the
16 state for law enforcement? If the Federal Government is
17 putting a hold on this... while North Dakota is assuming a
18 lot of security missions -- can't handle without resources?"

19 So he goes on to say, "Don't need answers
20 tonight. Most of these questions are the same Senator H
21 asked me and Mr. Crook last week. If I need to start going
22 to the DOJ/DOI/ASA meetings to help facilitate and
23 collaborative Federal position, let me know. We," assuming
24 the Corps, since he's the chief, "are on the pointed end of
25 the spear here and getting absolutely no real help. Time

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1 for us," the Corps, "to start taking this OFF," all caps,"
2 "the back of John Henderson and helping Administration to
3 find an acceptable outcome. Let me know if I need to
4 discuss with Ms. Darcy - inform CSA and VCSA - or start
5 going to daily meetings. I am assuming worst case - so far
6 that is playing out. Not doing this much longer without
7 personally being a player in a SOLUTION," all caps.

8 "Thanks, Todd Semonite."

9 Strong email, and it got your attention,
10 General, because you responded not too long after that same
11 day to Chief Semonite, copied Major General Jackson, but
12 dropped off -- dropped off Mr. Crook.

13 And so you start your email response to the
14 chief, Semonite, and Major General Jackson saying, "Sir - a
15 few responses to your questions below." Then you use a
16 numbering nomenclature that responds to Chief Semonite's
17 email to you and Jackson and Crook.

18 Number 1, "Sir, we have nothing to add as we
19 have the same question as you." Number 1 in Semonite's
20 email that you're responding to is entitled "'Easement.'
21 What is taking -- what is our talking point why the easement
22 hasn't been approved. Can't pretend to be studying when we
23 aren't." You say, "We've got the same questions as you." Is
24 that accurate?

25 A. Yes.

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1 Q. Okay. The Number 2 with regard to the 20-mile
2 issue, I'm going to skip over that because I don't have a
3 question.

4 I do have a question about Item Number 3,
5 which using your response nomenclature to Chief Semonite's
6 email to you, that one's entitled "Trespassing." And you
7 say, "Both Colonel Henderson and I shared with Governor
8 Dalrymple and Senator Hoeven that it is best to leave the
9 camps on Corps property until the Chairman can make the move
10 onto tribal property. We acknowledge the trespassing.
11 However, if we could marshal the security/police resources
12 to effect the move and were willing to accept the optics, we
13 do not have any certainty where the new camps would land.

14 "Accepting risk that the new camps would land
15 on adjacent private property, or state lands, where
16 additional damage would be incurred would only worsen the
17 problem.

18 "There is already at least one smaller camp
19 off Corps property that the state has not dealt with for the
20 same challenges I outlined here. Both Governor Dalrymple
21 and Senator Hoeven accepted this explanation in our
22 discussions with them. They don't like it, we don't either,
23 but it's the best of several bad choices until we can get
24 the majority of the camps moved onto reservation property."

25 Do you have any comment about your words back

1 in October of 2016, General?

2 A. No, Mr. Seby, these, I think, are consistent with
3 my assessment that I shared with you earlier today and the
4 assessment that I shared with the governor and Senator
5 Hoeven.

6 Q. Okay. Can we go, scroll down at the bottom of
7 that email, after you complete responding to the specific
8 chief's questions, you say, "Where you may be able to help,"
9 you're giving this information to the chief. "I think we
10 have been overly focused (internally) on the camps."
11 What -- what did that mean, sir?

12 A. Can I read the -- I'm trying to remember the
13 context. It might help me if I read the paragraph below.

14 Q. Oh, take your time. Read the whole thing. I
15 don't want to rush you in any respect.

16 A. Oh, yes. Okay. I recall. You know, a lot of
17 focus on the camps from General Semonite, as -- as you saw
18 in his email, I think what I was trying to communicate here
19 was can he help, instead of focusing on the camps, can he
20 help the decisions above us.

21 You saw in my Number 1 there we had the same
22 question as the -- as the governor and Senator Hoeven on the
23 decision regarding the easement. I believe we are now in
24 mid October, and we had already, I believe at this time,
25 already answered the six questions that were posed to us by

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1 the assistant secretary, all the technical questions.

2 Sent those forward for her consideration, but
3 at this time still not yet had a decision of whether or not
4 they were going to move forward with the easement. I
5 believe that's what I was asking my boss in a polite way
6 to -- to focus on, if he could help us with the secretary's
7 office.

8 Q. Okay. And then the next paragraph below that is,
9 you say, "The Chairman has shared with us several time" --
10 "times that when a final decision is made, they will either
11 have '4 days of celebration' or 'four days of mourning,'
12 depending on the decision - and go home."

13 And you say, "My assessment, not shared by
14 all, is the uncertainty we are creating with the easement
15 decision and the Joint statement" -- "statements," plural,
16 "only fuels the hope of a positive outcome (as did the 5 x
17 Sen letter to POTUS earlier today)."

18 "Anything we can do to complete the review
19 and make a decision on the easement will take much of the
20 steam out of this protest - at least for the more peaceable
21 factions."

22 You're referring to factions within the camps
23 on Corps property?

24 A. I'm referring to all of the factions that were
25 present in this part of North Dakota at the time, not just

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1 those on Corps property.

2 Q. Okay. Were there more than one factions in the
3 protest camps located on Corps property?

4 A. Yes.

5 Q. Did those factions include peaceful factions and
6 extreme factions?

7 A. Yes.

8 Q. Okay. So I want to ask you in mid September of --
9 pardon me, mid October of 2013 -- pardon me. Scratch
10 everything I just said.

11 In mid October of 2016 you're acknowledging
12 to your boss, the chief of engineers, that there were
13 trespass, acts of trespassing occurring on Corps property?

14 MS. ZILIOI: Objection, mischaracterizes
15 testimony.

16 BY MR. SEBY:

17 Q. Well, what do you -- "We" -- I'm quoting you, sir,
18 "we acknowledge the trespassing." Is that not what you say
19 in the top email on Number 3, second sentence?

20 A. Yes, that -- that's -- that's my statement.

21 Q. Okay. Thank you. That's what I understood your
22 earlier testimony to be, exactly that.

23 Well, what about the Standing Rock special
24 use permit that you indicated?

25 A. So here we're not talking about -- in this report,

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1 I'm talking about the land north of the -- the Cannonball,
2 the camp.

3 Q. Okay. So you're making a distinction?

4 A. Could you repeat your earlier question? I'm
5 sorry. I want to make sure I understand when you mention
6 the special use permit.

7 Q. Yeah. Yeah. Well, at this point -- again, the
8 point in time your email is dated is October 13th, 2016, and
9 you're saying -- you reference "camps," plural, "on Corps
10 property until the Chairman can make the move on to tribal
11 property. We acknowledge the trespassing."

12 I just am asking you because you said that
13 this only pertains to the camps on the northern Corps
14 property. It doesn't say that in your email. So I -- is
15 that what you're saying you meant?

16 A. No, you're correct. I do not recall where we were
17 in terms of the special use permit for that land south of
18 the Cannonball. I don't recall if that was ever approved or
19 where that stood in terms of status in mid October.

20 (Deposition Exhibit No. 348 was
21 marked for identification.)
22

23 BY MR. SEBY:

24 Q. Got it. Thank you. Okay. I'd like to go to the
25 next exhibit, being Exhibit 348, and I don't want to limit

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1 your ability to confirm this, but I will tell you that this
2 is a compound email, all of which is part of the Exhibit 347
3 we just reviewed, but I'm bringing it up because your
4 counsel produced it as a separate document.

5 And we took note of it because the only new
6 thing that's added on top of your earlier response to
7 Chief Semonite where you numbered the paragraphs, and you
8 can see that below where that whole string is there, there
9 is a new response to your email to the chief and Major
10 Jackson.

11 And Chief Semonite is saying to you, Scott
12 and Ed, a message here that again does not go to Mr. Crook,
13 he was dropped off by you on the email that Mr. -- the chief
14 is responding to.

15 So the chief says on Friday, October 14th,
16 20167, "Scott/Ed. Thanks... we are tracking. Theme of my
17 email was not so much to you two... but to LOWRY," all caps,
18 "and let him know that I am not satisfied with status. Will
19 see if he responds. You guys are all over this... just want
20 to slowly raise the bar as the chief that at some point, I
21 will ensure that USACE doesn't get further wrapped into an,
22 all caps, "EXTENDED administration delay or blocking action.
23 You guys need to stay consistent and measured... let me push
24 this. Just want others to step up and do their job.
25 Thanks... tight day today... but if we need to talk, let me

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1 know."

2 Strong email. Do you happen to know, this is
3 your chief, this is your superior officer at the time, the
4 person who sat now where you sit, sir, speaking strongly to
5 you and to Major Jackson, saying the assistant, the deputy
6 assistant secretary of the Army for Civil Works needed a
7 special prod, to "let him know I am not satisfied with the
8 status. Will see if he responds."

9 Is -- is the chief insinuating that Mr. Crook
10 is -- comes and goes, doesn't pay attention, doesn't get it?
11 What -- What is the context here, to your knowledge?

12 A. I have known General Semonite a long time. I
13 don't think he was suggesting that at all. I think he was
14 just letting the principal deputy know that this is on his
15 radar, and the field is doing all it -- it can to deal with
16 this situation.

17 And General Semonite I believe shared my
18 assessment that the lack of a decision from the
19 administration in my opinion was -- continued to fuel some
20 of the protest behavior that we were seeing in the field.
21 And that he was letting the principal deputy know we've got
22 to make movement on that front as well. That -- that was my
23 read on his response.

24 Q. Okay. Thank you. Is -- is the chief, Chief
25 Semonite, making a distinction between the views, integrity

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1 and the perspective of the Corps as opposed to the political
2 leadership of the Civil Works branch?

3 MS. ZILIOLO: Objection, foundation.

4 A. I'm sorry. Could you repeat the question? I
5 didn't understand.

6 BY MR. SEBY:

7 Q. Do you believe the chief is pointing out to you
8 that because he's inserting himself now with priority, it
9 reads, that he says, "I will ensure that the USACE doesn't
10 get further wrapped into an extended administration delay."

11 Is -- is he referring to the place where that
12 delay resides?

13 A. I believe what he's saying here is that we had
14 done our -- our technical homework on the response -- the
15 questions that the assistant secretary and her staff posed
16 to us. We had turned in that homework and that there was
17 frustration that there -- there was not movement toward a --
18 a decision.

19 Q. Got it. And that was the -- all in response to
20 the joint statement September 9 we talked about earlier,
21 where the three agencies announced publicly without your
22 knowledge and without Colonel Henderson's knowledge that
23 they were going to reconsider decisions, final decisions
24 that had already been made?

25 A. So, Mr. Seby, yes, and some additional context.

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1 Following that joint statement, and I don't remember the
2 exact time frame, it may have been a couple of weeks, on the
3 first iteration, we received six technical questions. I
4 mentioned some of this earlier.

5 Q. Yes.

6 A. Related to environmental justice, some safety
7 technology that could be applied to this particular
8 crossing, and four others.

9 And we had to go back and do some additional
10 homework with our staff to respond to those questions. And
11 that's what I believe General Semonite is referring to here.

12 (Deposition Exhibit No. 349 was
13 marked for identification.)
14

15 Q. Okay. All right. If -- thank you.

16 If we can move to Exhibit 349, please. And
17 this is a two-part email. If you would, please look at the
18 first part which is an email from Kevin Lewis to Chief
19 Semonite, copied to Karl Jansen.

20 And it is a article, I think, that he's cut
21 and pasted into the -- and it looks as though it's from the
22 Washington Times, and it's an article that he's cut and
23 pasted and sending to the chief.

24 Please -- please take a minute and read that
25 first email there at the bottom and onto the next page?

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1 A. Okay. I've read the note from Colonel Jansen.

2 Q. Okay. That note, which is an article, is a --
3 references a -- the title of that article that he's
4 forwarding is "North Dakotans seek federal aid after
5 livestock butchered near pipeline protest."

6 And I don't want to mischaracterize the
7 article, but -- because you've read it, so please advise me
8 if you think it's not a fair canvass of the article.

9 But the article talks about North Dakota
10 congressional delegation called on the Obama administration
11 to kick in funding for law enforcement following attacks on
12 livestock near the Dakota Access Pipeline protest camp.

13 And talks about a cow being shot, a cow being
14 attacked and alive but injured, and earlier that missing 30
15 head of cattle reported, and four dead cows and three dead
16 bison, and a dead saddle horse belonging to citizens of
17 North Dakota who live nearby the Corps property.

18 And the livestock association of --
19 Stockmen's Association of North Dakota, offered a reward for
20 information about those circumstances.

21 And the article goes on to say that in a
22 letter Tuesday, "the North Dakota delegation, Ms. Heitkamp,
23 Republican Senator Hoeven and Republican representative
24 Cramer, urged the Obama administration to provide additional
25 support for state and local law enforcement."

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1 And then it quotes from the letter to the
2 congressional delegation from North Dakota, and the letter
3 according to this article says it was addressed to Attorney
4 General Loretta Lynch, Interior Secretary Sally Jewell, and
5 Army Corps of Engineers Lieutenant General Todd Semonite,
6 Chief of Engineers.

7 And it says, "While we recognize Americans'
8 right to protest, we believe everyone has a responsibility
9 to follow the law."

10 That's all I want to say about that article,
11 but it was forwarded to you, by the chief to you and
12 Colonel Henderson and David Cooper. Who is Mr. Cooper?

13 A. Mr. Cooper is the chief counsel for the U.S. Army
14 Corps of Engineers.

15 Q. Is he still in that capacity?

16 A. Yes, he is.

17 Q. Okay. And then the individuals on the letter
18 that's forwarded. And -- and the chief says, "Team, want to
19 keep us all in the loop - see article from Kevin." And
20 that's the one that we just talked about.

21 "This will only get worst - if we expect a
22 DRAWN," and here he goes in caps, "DRAWN OUT
23 ADMINISTRATION," all caps, "approval of the EASEMENT," caps,
24 then more than willing to have the sherriffs (sic) in our
25 camp to do spot checks for health/safety and to enforce

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1 discipline.

2 "We still have a lot of risk on North Camp -
3 let's ensure it doesn't get out of control without us," the
4 Corps, "asking for interdiction by local law officials. No
5 need to comment. Keep tight."

6 What did, in your opinion since you were that
7 a named recipient of this email, General, what did this
8 mean, that there was a lot of risk as of October 19th, 2016,
9 in the North Camp?

10 MS. ZILIOLO: Objection, foundation.

11 BY MR. SEBY:

12 Q. I'm reading the email.

13 A. Yeah. So I don't remember if I followed up to
14 General Semonite on this. If I did, I might have offered
15 that the local law enforcement, the sheriff, did not need
16 any approval from the Army Corps of Engineers to enforce
17 discipline, to enforce the law on any of these Corps
18 properties, either north or south of the --

19 Q. I'm sorry. I'm sorry to interrupt, General, but
20 that's not my question. My question --

21 A. Okay.

22 Q. -- sir, I apologize.

23 As a recipient, a named recipient of the
24 letter that we're talking about, the Exhibit 349,
25 Chief Semonite's email to you, the colonel and the chief

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1 counsel for the Corps, what did -- what do you believe the
2 chief meant by "we still have a lot of risk on North Camp"?

3 A. I -- I don't specifically know what he -- he means
4 there.

5 Q. Okay. And do you think the chief knew about the
6 distinctions between the north and the south camp at that
7 point?

8 A. I believe he did, yes.

9 Q. Okay. And -- and what -- what's the basis for
10 your belief?

11 A. I believe he knew that we were at some point
12 working a -- a special use permit for the land south of the
13 Cannonball River, but that we did not have the ability to
14 use -- to go forward with a standing use permit because of
15 the grazing lease on the north side. And of course that was
16 what made me believe there was just a lot more people, it
17 was a larger camp.

18 Q. Okay. So your -- if I understood what you just
19 said in response to my question is, as of October 19th, 2016
20 the Corps was still working on a special use permit for the
21 south?

22 A. Again, I -- I don't recall where that permit was
23 in the approval process at this time.

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(Deposition Exhibit No. 350 was
marked for identification.)

BY MR. SEBY:

Q. Okay. If we could please turn to the Exhibit 350.

MS. ZILIOLO: Mr. Seby, I'm just wondering if
there might be an appropriate time for a break coming up.
We can get through this one if you'd like.

MR. SEBY: That's a great suggestion.
Let's -- let's complete this exhibit, which will be brief in
my belief and then we -- we should take a break. I --
pardon me, General, time flies.

A. It's okay, sir.

BY MR. SEBY:

Q. So this next exhibit is Exhibit 350, and like an
earlier exhibit where we were provided the same string with
an additive response or an action on that string, but it was
given to us as a separate document, so I -- that puts me in
a position of having to bring them up as separate exhibits.

So I apologize, but what I'm doing here with
Exhibit 350 is, it's the same article Mr. Jansen forwarded
from the Washington Times to the chief, Todd Semonite, that
the chief then wrote to you and Colonel Henderson that we
were just discussing in Exhibit 349.

I am bringing all that up here because there
is a new installment in that -- in that compound email where

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1 you took the chief's response to the group and forwarded it
2 on to two individual in the United States Army, a Karen
3 Durham-Aguilera, and Mr. Ponganis, who you mentioned
4 earlier.

5 And there is no text in your forwarded
6 message about that, so I -- I want to ask you why would --
7 why did you forward the chief's email to these individuals?

8 A. I wanted them both to be aware of the -- of
9 General Semonite's message and of -- and of the end of the
10 article. Mr. Ponganis I mentioned was a senior member on my
11 staff in Northwest Division.

12 Ms. Karen Durham-Aguilera was a staff -- a
13 senior member of the staff here in headquarters USACE, who
14 had an additional duty of assisting the Northwest Division
15 in actions that were unique to our region.

16 Q. Based in -- in the USACE headquarters?

17 A. That's correct.

18 Q. Okay. Is she a political appointee or a member of
19 the United States military?

20 A. She is a senior -- member of the senior executive
21 service in the US Army.

22 Q. With respect to my question, what does that mean?
23 Is she a civilian or --

24 A. She's not a political appointee if I understand
25 your question.

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1 Q. Is she a civilian?

2 A. Yes.

3 Q. Okay. But she's a civilian career individual?

4 A. Yes, that's correct.

5 Q. Okay. Thank you, sir.

6 MR. SEBY: Well, how about a break everyone?

7 Ms. Zilioli, General?

8 A. Yes, sir. Thank you.

9 MS. ZILIOLO: That sounds great.

10 MR. SEBY: Ten minutes sound good, everyone?

11 MS. ZILIOLO: Yes.

12 A. Thanks.

13 MR. SEBY: Thank you.

14 THE VIDEOGRAPHER: Okay. Going off the
15 record at 12:46.

16 (Short recess taken.)

17 THE VIDEOGRAPHER: Going back on the record
18 at 12:59.

19 (Deposition Exhibit No. 351 was
20 marked for identification.)

21 BY MR. SEBY:

22 Q. Okay. General Spellmon, we're back on the record
23 after a short break. And if we could please, Rachel, put up
24 Exhibit 351.

25 General, this is another document produced by

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1 your counsel for the United States from custodians of the
2 Army Corps, and it is a two-page email.

3 The first is at the bottom if we could go
4 there. It's an email from Ms. Eileen Williamson to Eileen
5 Park by a media outlet by the name of KOIN, K-O-I-N. And
6 like, if you would, please, read that first part of the
7 chain that starts at the very bottom of the first page and
8 continues to the second page.

9 A. Can you scroll down a bit more on the second page?
10 Okay. Thank you. I -- I read that part.

11 Q. Okay. Sir, I also want to mention that this
12 document produced by the United States and the Corps in
13 particular has two attachments.

14 And I -- I want to point those out to you now
15 because I think that it's the right thing to do, for you to
16 be aware of what the attachments are to this email before we
17 discuss it.

18 A. Okay.

19 Q. The first is a document that has, as you can see
20 on the screen there, United States Army Corps of Engineers
21 logo, and the title of the document is "Key Messages and
22 Talking Points Dakota Access Pipeline."

23 And at the bottom of the document just by way
24 of reference, it says September 30th, 2016, and these are
25 attachments to Ms. Williamson's -- well, they're

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1 attachments, I think, that are attached here.

2 But it looks as though they are -- originate
3 with Ms. Williamson or perhaps Ms. Gaskill, who is one of
4 your Northwest Division colleagues, chief of public affairs.

5 Somehow along the way these two attachments
6 were attached. It could be, I don't know, the first email
7 from Ms. Williamson, or the middle or the last, I don't
8 know.

9 But I just want you to be aware of these
10 documents, and even though the email chain is -- is
11 November 1 of 2016, the first attachment is dated
12 September 30th, 2016. And the second document is not dated,
13 but it says across the top, "Standing Rock Sioux Tribe
14 permit not renewed, Corps concerned over escalation and
15 public safety."

16 Sir, would you take a moment and familiarize
17 yourself with both attachments, because I'd like to discuss
18 them both.

19 A. Yes, thank you.

20 Yes, thank you. Could you scroll down a
21 little bit, please? Please, could you scroll down again,
22 please? Okay. And could you scroll up to the first
23 attachment and scroll down, please, below the gray area.
24 And scroll down again, please. Okay.

25 Yes, just -- Mr. Seby. I'm familiar with

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1 these documents now. Thank you.

2 Q. Both of them, sir?

3 A. Just finished reading. I'm sorry.

4 Q. Yeah.

5 A. Yes, thank you.

6 Q. Yeah. So, General, the first email from
7 Ms. Williamson in this chain is to a media person of some
8 kind, from Ms. Park from KOIN. And Ms. Williamson's email
9 provides information references by way of links and things
10 like that.

11 And in her -- again, her email is dated
12 November 1st. And she includes at the very bottom of her
13 email, it says, "This is the History of USACE involvement
14 of," I think she meant "in," or "for the project." The
15 project being the Dakota Access Pipeline.

16 Which she says we -- "These are specific to
17 the Dakota Access Pipeline but also answers some of the
18 general process questions with respect to the laws we," the
19 Corps, "must follow when evaluating projects. This is the
20 history of the USACE involvement in" -- "of the project."

21 She lists a couple of links to, Announcement
22 of the public comment period and Draft and Final
23 Environmental Assessment by the Corps, The Draft EA, Update
24 on Decision Process, Section 408 Permit Issued, and the
25 Final EA, and then the last one is Special Use Permit for

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1 Standing Rock Sioux Tribe.

2 And it contains a link to a Corps of
3 Engineers media release that says -- the release says the
4 Corps granted a special use permit to the tribe. Are you
5 familiar with that release?

6 A. I am not familiar with this -- this press release,
7 no.

8 Q. Okay. Do you know -- do you have an opinion on
9 why on November 1st of 2016, the Corps, a Corps
10 representative from the public affairs office in Omaha is
11 responding to media inquiries telling them that a special
12 use permit was granted to the Standing Rock Sioux Tribe?

13 A. My assessment is she was responding to a media
14 question.

15 Q. Okay. Do you know -- do you have an opinion on
16 whether or not that was an accurate thing to say or do on
17 November 1st, 2016?

18 A. Mr. Seby, again, I don't recall the exact timeline
19 for the approval of the special use permit for that land
20 south of the Cannonball River. I read in the note all the
21 way at the bottom that Colonel Henderson made the decision
22 not to renew that permit on October 30th, effective
23 October 30th.

24 Q. Yeah. Okay. With respect to the second
25 attachment, which is not dated, but it says -- perfect,

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1 let's get there first. Thank you, Rachel. There we go.

2 With respect to that document, are you --
3 prior to us putting it on the screen and showing you, which
4 you've now read, were you familiar with this document?

5 A. I -- I do not recall this -- this -- this
6 document, no.

7 Q. Would you know, sir, who wrote this?

8 A. I -- I do not know the -- the author. My
9 assumption would be it would be the public affairs officer
10 for Omaha District under the guidance of -- of the commander
11 and his staff.

12 Q. Okay. Would you know, is this a draft or a final
13 document?

14 A. I -- I don't know.

15 Q. Okay. Would you know whether it was kept
16 internally or ever published outside the Corps?

17 A. I don't know if it was ever published.

18 Q. Okay. I don't want to belabor it, but you just
19 don't know anything about this, huh?

20 A. Mr. Seby, I -- I do not recall.

21 Q. Okay.

22 A. The -- the --

23 Q. All right. I -- thank you. And I won't ask you
24 further as to your knowledge of this, but I will just
25 observe that if we could magnify that first couple of

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1 paragraphs of that document, we lost it from the screen
2 there -- the attachment, please. The attachment 2 that we
3 were talking about.

4 There we are. If we can magnify that a bit,
5 I -- I thought it was interesting and wondered if you had an
6 opinion on it that this is an article with the title
7 "Standing Rock Sioux Tribe permit not renewed, Corps
8 concerned over escalation and public safety." Omaha,
9 Nebraska.

10 "The Omaha District commander in coordination
11 with the Standing Rock Sioux Tribe, has decided not to renew
12 the special use permit which authorized the use of federal
13 land for peaceable" -- "peaceful demonstrations by members
14 of the Standing Rock Sioux Tribe against the Dakota Access
15 Pipeline."

16 "The permit is set to expire October 30th and
17 the commander has decided that recent events have
18 contributed to an environment that is neither peaceful nor
19 safe." Do you have any comment on -- on that statement in
20 this document such as it is?

21 MS. ZILIOLO: Objection, vague.

22 A. I share the general assessment that's being
23 communicated here, and I believe Chairman Archambault would
24 share the same assessment.

1 BY MR. SEBY:

2 Q. Okay. How about with respect to the sentence that
3 says -- at the -- at the very bottom of that part that's
4 highlighted, "This permit is set to expire" -- oops, "This
5 permit is set to expire October 30, and the commander has
6 decided that recent events have contributed to an
7 environment that is neither peaceful nor safe." Had you
8 ever discussed that with Colonel Henderson?

9 A. I do not remember discussing this particular
10 permit or its expiration with Colonel Henderson, no.

11 Q. Okay. So you -- do you know whether or not that's
12 a valid statement that the, "Permit is set to expire
13 October 30"?

14 A. Again I -- I -- I -- these are issues, these are
15 arrangements that are handled at the district level, so I --
16 I am not familiar with the details or any terms and
17 conditions that were included in this -- in this -- this
18 special use permit.

19 Q. Okay. I -- I appreciate that. Let's go to the
20 first attachment to this exhibit, which is an email, and
21 it's exhibit -- well, it's -- it's the first attachment, and
22 it's that -- there we go -- let's scroll up a bit to the
23 very top.

24 This is the "Key Messages and Talking Points"
25 document. It looks to be an Issue, Background, Public

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1 Affairs Guidance and Key/Command Messages, Decisions/Pending
2 Decisions, Authorities, Tribal Trust, NEPA, Statistics and
3 Numbers. So I won't belabor the text, but I wanted to ask
4 you, are you familiar with this document?

5 A. Yes.

6 Q. Okay. Based upon that, and again this is dated
7 September 30th, 2016, why would the Corps public affairs
8 folks develop key messages and talking points as of that
9 date that contains no reference to the ongoing protest camps
10 on Corps of Engineers property in North Dakota?

11 MS. ZILIOLO: Objection, calls for
12 speculation.

13 BY MR. SEBY:

14 Q. Well, I -- I understood you read the document. If
15 you see that my impression that there's no reference to any
16 protest camp activity present on Corps property at this time
17 that's been going on since, as you said, since August, mid
18 August, so for six weeks, at least, why would -- why would
19 the Corps not talk about that circumstance in this key
20 messages and talking points document?

21 A. I -- I don't know specifically why that was left
22 out. This document was intended to send across the Corps,
23 to all 43 of our districts and all nine of our regional
24 commands, Mr. Seby, you may recall at this time we were
25 seeing protests not just in North Dakota or at my home in

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1 Vancouver, Washington.

2 We were seeing protests pop up at many of our
3 district headquarters offices in many major cities. So for
4 those district commanders and those regional commanders,
5 they were not working on this particular set of issues each
6 and every day. So this was an attempt to inform the broader
7 enterprise and leadership across the enterprise so that when
8 they were talking to protesters or local media, they had
9 background information of what was happening in North
10 Dakota.

11 Q. Okay. General, did any of those other protests
12 that you're referencing resemble in any size, manner, nature
13 or scope to those in North Dakota on Corps property?

14 A. We saw several large protests even here in DC, but
15 no, I wouldn't say they were of the same scale as -- as we
16 saw in North Dakota, no.

17 Q. And is dated September 30th, 2016. So at that
18 time per our earlier dialogue and your responses, the
19 protests had been going on Corps property for six weeks at
20 this point.

21 Did any of the other protests that you're
22 referencing, apart from being substantially smaller, involve
23 people encamped on Corps of Engineers property for that
24 period of time or larger?

25 A. No.

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1 Q. Okay. All right.

2 A. I should say none that I'm aware of. And I think
3 I would be aware of them, but, no.

4 Q. Sure. I appreciate that clarification.

5 (Deposition Exhibit No. 352 was
6 marked for identification.)

7 BY MR. SEBY:

8 Q. If we could go to Exhibit 352, this is another
9 example, just -- just happens to be, and that's why I bring
10 it up, that -- where the same -- same email string that we
11 were just discussing in Exhibit 351, contains a separate
12 document produced to us that's got an addition to that
13 string.

14 So I bring it up, you can take a moment and
15 read to confirm for yourself that this is the same email
16 string we were just discussing minus the attachments.

17 But the only reason I bring it up is the top
18 email at the very top where you respond to Ms. Gaskill
19 forwarding the information to you, and you say to
20 Ms. Gaskill, copy to Ms. Williamson and Mr. Diciro and
21 Mr. O'Hara, you say, "Thanks for the follow-up, Amy. Got
22 it." What did you mean by that?

23 A. I meant that I received her -- her email and
24 message.

25 Q. Okay. Just that simple?

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1 A. Yes.

2 Q. Okay. Do you recall, General, that you took any
3 further action with respect to the attachments, either of
4 the attachments we just discussed on the previous but
5 related exhibit?

6 A. Mr. Seby, the only, I think new in this email is
7 the message from Amy right before mine if I could just read
8 that quickly.

9 Q. Oh, of course.

10 A. Right there. Thank you.

11 Q. I will just say that that was prior to the prior
12 exhibit we're discussing, but not to interrupt your review,
13 I just wanted to make that observation. It's not -- that is
14 not new.

15 A. Okay. And can we just scroll down, please. Okay.
16 No, thank you. I'm recentered.

17 I'm sorry, sir, can you repeat your question?

18 Q. I just wanted to know whether or not after you
19 acknowledged receipt of this, did you do anything further
20 with this information or the two attachments that we just
21 reviewed in the prior related exhibit?

22 A. I did. So, in addition to having protests around
23 the country, we had members of our own workforce in the
24 headquarters where I worked that weren't working on these
25 issues each and every day.

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1 And I recall it was generally around this
2 time where I had a town hall with my own headquarters to
3 inform them, because they only saw or heard or read what
4 they read in the news.

5 And so we wanted to make sure everyone
6 understood the facts on the ground. So that's how, in
7 addition to talking to media, we also used these points to
8 talk to our -- our own workforce.

9 Q. And the HQ, your HQ, you're referring to the
10 Northwest Division?

11 A. The -- yes, sir, the Northwest -- the staff of the
12 Northwest Division.

13 Q. Got it. Got it. So this is what you used for
14 that purpose?

15 A. It was one of the purposes that we used it for,
16 yes.

17 Q. And would that include both attachments?

18 A. Not the -- I -- I should clarify, just the first
19 two pages where the -- you saw the talking points, I did not
20 use the -- I didn't -- I was not aware of the -- the press
21 release. And certainly don't recall using that in any of my
22 discussions with media or my team, my staff.

23 Q. Okay. Do you have any idea where that document
24 came from? How did it end up attached to this, to these
25 emails?

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1 A. The press release, Mr. Seby?

2 Q. Yes, sir.

3 A. No. No, I don't know how that ended up in this
4 email chain.

5 Q. Okay. And I believe you said you don't know
6 anything about it, never saw it, don't know who created it,
7 who contributed to it, or any -- all of the above, right?

8 A. I do not recall seeing it before today.

9 (Previously marked Exhibit No. 37

10 was introduced for the record.)

11 BY MR. SEBY:

12 Q. Okay. Thank you. If we could please go to
13 Exhibit 37, this is a -- an exhibit from a prior email, a
14 prior deposition, which was the deposition of Lieutenant
15 Colonel Startzell.

16 I'm incorporating it into the exhibits for
17 this deposition, General, and it is a -- it's a two-part
18 email string, and while it was part of the Startzell
19 deposition, let's start with the first email in the chain,
20 which is an email from you, sir, dated Friday, October 28th,
21 2016, addressed to the chief, Todd Semonite, and copied to
22 Major General Stevens, Major General Jackson, Ms. Aguilera,
23 and David Cooper.

24 And you are copying those individuals, but
25 you are addressing the email as "sir," so I believe that is

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1 to Mr. -- or Chief Semonite. Is that fair?

2 A. Yes, that's correct.

3 Q. Okay. And you say to the chief on October 28,
4 2016, "Based on yesterday's escalation of force incidents."
5 Do you recall what those escalation of force incidents that
6 occurred yesterday, being October 27, 2016?

7 A. Okay. There were several, so I do not remember
8 the specific one. One that stands out in my mind where an
9 individual's arm was injured, some type of explosion device.
10 I don't recall if it was that one specifically looking at
11 the dates, but there were several.

12 Q. Okay. You go on to say, based on those events,
13 you've identified one as among several, but not -- not the
14 rest, and I just note that, you say, "We," the Corps, "are
15 going to revoke the Special Use Permit for the Standing Rock
16 Sioux Tribe camp effective immediately.

17 "Colonel Henderson will inform Chairman
18 Archambault later today, and we will follow with a press
19 release."

20 General, is it possible that the press
21 release we just read that was an attachment to Exhibit 351
22 is the press release?

23 A. Yes.

24 Q. It is. Okay.

25 A. Yes.

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1 Q. This -- this rang a bell apparently, huh?

2 A. Yes, this -- that was -- that was most likely the
3 press release that -- that Omaha released and it's what I'm
4 referring to here.

5 Q. Okay. All right. So you're telling the chief
6 that that's being worked on, it sounds -- those are my words
7 but that's what it reads like, is that accurate?

8 A. That's right. So this was dated 28 October and as
9 I recall from the prior email, it was actually two days
10 later that of Colonel Henderson made the call not to renew
11 the special use permit.

12 Q. Yeah. My question is a basic one. And that is
13 using the word revoke or not renew, those are two different
14 types of actions. To -- to revoke something is to cancel or
15 remove something that's in place. Is that a -- I'm not a
16 Webster's dictionary spokesperson, but is that -- is that a
17 common man-on-the-street understanding that we share?

18 A. Yes.

19 Q. Okay. And to not renew is to just let lapse.
20 Would that be fair?

21 A. That would be fair.

22 Q. Okay. I just asked because that attachment to the
23 draft press release uses different terminology. It uses
24 "not renew," whereas your emails to the chief says we're
25 going to revoke the permit. Do you know why the difference

1 in word choice?

2 A. It was probably poor word choice on my part. As I
3 told you earlier, this morning I had never served as a
4 district commander, I'm not intimately familiar with the
5 details of special use permits, I probably used a poor
6 choice of words here.

7 Q. And I'm not being critical I just am trying to
8 understand the -- the difference, that's all.

9 Okay. So when you're writing to the chief on
10 October 28, "We will follow with a press release," that
11 press release is -- is mentioned in a sentence that --
12 that's -- you start by saying, "Colonel Henderson will
13 inform Chairman Archambault later today, and we will follow
14 with a press release."

15 Were those supposed to be -- I don't
16 understand the relationship between the clause and the
17 sentence that's after the comma, and the first part where
18 Colonel Henderson will take an action with the -- with the
19 chairman.

20 A. So I use the word "we" a lot. We are a team,
21 and -- but "we" specifically here meant Omaha District.

22 Q. Okay. And then the next paragraph break in your
23 email to the chief says "Our rationale." Are you referring
24 to the rationale of the district or the Northwest Division?

25 A. Our -- I'm referring to our -- our collective

1 reasoning.

2 Q. Being the district level or the -- I'm sorry. The
3 division level?

4 A. I think this is a common assessment that we shared
5 with the chairman certainly at the district level, and I
6 shared this assessment as well.

7 Q. Okay. All right. And you say, "Our rationale,"
8 and there's four bullets, "Yesterday's events," plural,
9 "proved again this is not a peaceful or prayerful protest."
10 Do you recall what you meant by that?

11 A. Yes. There had been several other escalation of
12 force incidents. I'm sorry. I cannot recall the details of
13 location and dates. But I knew there had been certainly
14 several.

15 Q. Yeah, your reference says, "Yesterday's events,"
16 and I -- I appreciate you're -- you're telling me you can't
17 recall what those were.

18 A. I don't remember.

19 Q. That's fine.

20 A. I'm sorry.

21 Q. That's fine. Your second bullet says, "Life,
22 health, safety for all in the area are at risk." What is
23 the area that you're referring to?

24 A. I'm referring to the entire area, the camps, the
25 construction site, the -- the roads the public used to

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1 travel in this -- in this part of the county.

2 Q. So you're making a -- an assessment and
3 characterization of risk to life, health, safety for people
4 and in -- on both Corps of Engineers land and non-Corps of
5 Engineers land in that area?

6 A. Yes, I'm -- I'm talking about everyone here, from
7 law enforcement to construction workers to peaceful
8 protesters, to tribal members, and the public that had to
9 transit this area.

10 Q. Yes. And then your next bullet says, "There has
11 been much reckless endangerment." Do you recollect why you
12 chose those words?

13 A. Here I'm referring to there had been a number of
14 convoys of vehicles that were speeding to locations where
15 construction crews were working, and reports coming in from
16 law enforcement suggested that this had happened in public
17 areas, near schools, maybe near homes, and that's what I'm
18 referring to here.

19 Q. Did those convoys of vehicles speeding around
20 emanate from the Army Corps of Engineers property?

21 A. I -- I don't know if some, all or others gathered
22 from other locations. I don't know.

23 Q. Do you --

24 A. I never witnessed one.

25 Q. Okay. I'm just trying to understand what the

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1 nature of your reference is, and you've explained that there
2 were a number of convoys. Do you believe that, whether it
3 was all or some, some may have emanated from Army Corps of
4 Engineers property where protest camps were located?

5 A. I think it's fair to say some may have. Again, I
6 didn't witness one, I just received reporting on them.

7 Q. You were -- you were informed that?

8 A. Yes.

9 Q. Okay. Then the final bullet of your stated
10 rationale for the action of revoking the special use permit
11 for the SRST camp, and would that camp be on the south side
12 of the Cannonball River?

13 A. The Standing Rock Sioux Tribe camp that we're
14 referring to with the context of the special use permit,
15 yes, that is the one -- one on the south side.

16 Q. That's because you expressly forbade the
17 consideration of any potential special use permit or
18 authorization on the north side per se?

19 A. That -- that's correct, there was no special use
20 permit given for anything on the north side of the
21 Cannonball.

22 Q. Okay. So we're talking here about situation and
23 circumstance on the south portion of the Army Corps of
24 Engineers lands south of the Cannonball River in North
25 Dakota?

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1 A. Yes. When I'm telling General Semonite that we
2 are closing the camp, not renewing the special use permit,
3 we're referring to that -- that camp on the south side.

4 Q. On October 28th, 2016?

5 A. Yes.

6 Q. Okay. And you say, last bullet, "There has been
7 damage and destruction of private property." Is that
8 associated with the rationale for revoking the special use
9 permit that you've told me was on the south side of the
10 Cannonball River?

11 A. Yeah. I cannot make that direct association. I
12 think here I'm making a general statement that there has
13 been damage of -- of private property in -- in the region.
14 I don't believe I was trying to associate that directly with
15 anything emanating from the south camp.

16 Q. What did you mean, then?

17 A. I'm reporting to General Semonite that there has
18 been reports of damage and destruction of private property
19 in this region.

20 Q. Sure. I'm just trying to understand the relevance
21 of that statement to your email, the context of your email
22 and the statements that you make to the chief above. I -- I
23 don't know the connection, so I'm merely asking what you
24 meant in your email to the chief.

25 A. I think it supported the -- the idea that we did

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1 not need to renew this particular special use permit, just
2 given what was occurring in the region.

3 Q. Again, you -- you chose the word "revoke" in the
4 email that we're looking at, right?

5 A. Yes, I wrote the word "revoke."

6 Q. Yeah. Okay. Then you say, "We will work with the
7 chairman to set suspenses for camp movement." Is that a
8 military term, "suspenses"?

9 A. Yes. In other words, deadlines.

10 Q. Okay. Thank you. So if I could use that
11 alternate word, We will work with the chairman to set
12 deadlines for camp movement, is that -- is that a fair
13 alternate word choice in that context?

14 A. Yes.

15 Q. Okay. For camp movement -- deadlines for camp
16 movement, what do you mean by that?

17 A. When we wanted to have people and belongings and
18 temporary structures off of the -- the camp property that
19 was subject to special use permit moved off of that land and
20 into one of the three camps that I mentioned earlier, we
21 were working with Chairman Archambault to displace those
22 people to.

23 Q. So the camp that you're talking about, camp
24 singular, you don't use the plural, suspense for camp
25 singular movement, you're referring to the -- a -- a camp on

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1 the south side of the Cannonball River?

2 A. Yes.

3 Q. And would that be an existing camp?

4 A. This was the camp that was the subject of the
5 special use permit, so, yes, it was existing at the time.

6 Q. Okay. And let's see, this is October 28th that
7 this one comes up. Earlier we talked about an exhibit and
8 an email that says, I think you were asked by a Corps
9 colleague, how are the Tribal Elders' decision process going
10 on, on the chairman's idea of moving off of the Corps land
11 to one of the three options on tribal land, and earlier we
12 talked about the feedback that didn't go so well.

13 Has something changed here that you're
14 bringing that back up?

15 A. No, just referring to the last sentence, what I
16 meant by "he needs this forcing function," we felt that
17 Chairman Archambault needed this as a forcing function with
18 his Tribal Council to -- to get to an agreement on the use
19 of one or two, or all three of the proposed sites on the --
20 on the reservation.

21 Q. Okay. So that forcing function intention that --
22 that you're telling me about by you and -- and the Corps
23 that you were commanding, did that intention and desire, was
24 that a reason for why the draft press release was phrased
25 the way it was?

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1 A. I --

2 MS. ZILIOLOI: Objection, calls for
3 speculation.

4 A. I'd have to read the press release again to
5 understand the question.

6 BY MR. SEBY:

7 Q. Okay. I just am wondering if you -- you, and I'm
8 not asking you to speculate -- I'm asking, again, we're
9 talking about your email, what you meant by "John and team."
10 Are you referring to Colonel Henderson?

11 A. Yes.

12 Q. Colonel Henderson and his "team are assembling
13 today's discussion points and drafting the Press Release
14 now." "We will share all of those with the team before we
15 launch."

16 General, do you know, did -- obviously a
17 draft press release was created, because you've told me
18 that's -- that's the document we were just looking at
19 associated with Exhibit 351?

20 A. Yes.

21 Q. But -- okay. We saw a document, but at the time
22 when we were talking about that document, I believe you --
23 you stated that you weren't aware who wrote it. And now
24 you're saying John and team are assembling it.

25 Would it -- would it be fair that Colonel

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1 Henderson wrote that or someone on his staff wrote it,
2 crated it?

3 A. Yes, Mr. Seby. That's what I said earlier. It
4 was likely developed, written, drafted by a member of his
5 staff, his public affairs staff. And I'm certain that
6 Colonel Henderson put his eyes on it before that was sent
7 out.

8 Q. Sent out to whom, sir?

9 A. I -- I don't know where, what specifically, how
10 he -- how he distributed that.

11 Q. So you don't know if it was -- is it accurate to
12 say you don't know what happened to the document we looked
13 at, whether it was sent out or not?

14 A. That's correct.

15 Q. Okay. You just don't know?

16 A. I -- I don't recall.

17 Q. Okay. And the reason I ask is I just wanted to
18 understand, you had mentioned this, in this email of
19 October 28 to the chief, and so I -- I don't want to assume,
20 but I -- you have a -- a district -- pardon me, a division
21 commander role speaking with the chief of -- of the Army
22 Corps of Engineers, telling him that you're going to do
23 something.

24 Would you have told him if you did otherwise
25 after you told him one thing? In other words, if a

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1 circumstance changed, evolved or -- and I -- I told you,
2 General, I was going to do X, and X didn't end up happening,
3 I changed my mind, or something happened that caused me not
4 to do what I told you I would do, that I would follow up
5 and -- and tell you that, is that, would that be your normal
6 conduct with the chief?

7 A. Yes. If you're asking specifically about the
8 press release, would I have followed up with him, whether or
9 not it went out or didn't? I don't recall if I did.

10 (Deposition Exhibit No. 353 was
11 marked for identification.)

12 BY MR. SEBY:

13 Q. Okay. All right. Okay. If we could go to
14 Exhibit 353, please. So we're going to talk about a couple
15 of emails that are formatted funny, but thanks to the Bates
16 numbering of the -- of the -- your counsel and the manner in
17 which they provided to me, this document we're going to talk
18 about has this cover page here that's -- that says it's from
19 Lowry Crook.

20 We've talked about who he is, and it is
21 addressed to Dan G. Utech and Tara L. Billingsley. Both of
22 those individuals have email domains that say "who.eop.gov."

23 Do you recall, General, what that naming
24 convention refers to? Who are these people and where are
25 they based upon the email domain that's referenced there?

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1 A. For the first question, I don't recall who these
2 individuals are. I believe the naming convention on the
3 email stands for White House Operations, Executive Office of
4 the President.

5 Q. That's what I was wondering, too. So these are
6 White House employees, Mr. Utech and Ms. Billingsley. Is
7 that -- is that your answer?

8 A. I don't know who they are. I can tell you from
9 their email addresses that's -- you could suggest that, yes.

10 Q. Okay. And again I'm not putting words in your
11 mouth, I'm asking if you -- you think that's possible?

12 A. Yes, I think that's possible.

13 Q. Do you happen to know that -- and the reason I'm
14 talking about this issue with you is that we're going to
15 talk about Mr. Crook's email, which is a two-part email.

16 The first is a -- an email from, and then
17 we'll talk about it, an email from Major General Jackson
18 that's addressed to Mr. Crook, and the assistant secretary
19 of the Army for Civil Works, Ms. Jo-Ellen Darcy.

20 And it's copied to Chief of Engineers
21 Semonite and yourself. And it's -- it's -- so that's --
22 that's the beginning of this and we'll talk about what that
23 says. But that email from Major General Jackson to
24 Mr. Crook and Ms. Darcy copied to the chief and to you,
25 Crook forwarded it on to the White House. If that's

1 who.eop, if that stands for the Executive Office of the
2 President at the White House.

3 The reason I'm wondering if that's not the
4 case is because, do you know whether Mr. Utech happened to
5 be as of November 2, 2016, the deputy assistant to the
6 President of the United States for Energy and Climate? Is
7 that the same Daniel G. Utech?

8 A. I don't know.

9 Q. Okay. Well, let's go back to the email that you
10 were part of that Donald Jackson sent to the chief and to
11 you. It says in that email that you were a party to, and
12 the subject line says, "President Obama video on Army Corps
13 and rerouting pipeline."

14 And Major General Jackson says to Mr. Crook,
15 "Lowry, We need to be prepared to clarify the record on
16 this, so need your thoughts on how best to do so."

17 And what he's asking about is an excerpt from
18 apparently a video clip made of the President of the United
19 States, Mr. Obama, in an MSNBC interview with Lawrence
20 O'Donnell, a show called The Last Word with Lawrence
21 O'Donnell. The President of the United States at that time
22 says, according to this video clip transcript, "I think that
23 right now the Army Corps of Engineers is examining whether
24 there are ways to reroute this pipeline."

25 Do you know that to be true at that time,

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1 sir?

2 A. That was not a true statement at that time.

3 Q. Not?

4 A. We were not looking at ways to -- it's not in our
5 authority to reroute pipelines. We take applications as
6 they come, and we do an environmental assessment on that
7 application, we look at other feasible alternatives, but we
8 at this time were not -- we were done with that -- that part
9 of -- of our analysis.

10 Q. I -- I don't want to be dramatic about that, and I
11 appreciate your candor and your statement, but the statement
12 I read to you is a quote attributed to the President of the
13 United States.

14 Am I understanding your statement just now
15 that, respectfully, you said that was not a true statement?

16 A. He writes "I think," but no, we were not at this
17 time examining to reroute this -- otherwise to reroute this
18 pipeline, no.

19 (Deposition Exhibit No. 354 was
20 marked for identification.)

21 BY MR. SEBY:

22 Q. Okay. All right. All right. So that's the end
23 of that email. I do wish to go to another example of where
24 your counsel produced documents to the State of North Dakota
25 that are a related email string that's -- that's -- that's

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1 just a different document produced.

2 So for that reason alone, I'm calling our
3 attention, please, to Exhibit 354. I apologize if you can
4 hear the wind -- windows outside of my room rattling, we've
5 got some very strong winds on the front range today, and I
6 hope it's not bothering anybody. Can't do anything about it
7 but I just am noting it.

8 So here we are at Exhibit 353 (sic), and this
9 is a -- a -- an exhibit with two emails in it, one, the
10 beginning email is from this same individual, Dan G. Utech,
11 EOP/WHO. So I'm again understanding -- my understanding
12 that that is Executive Office of the President, White House.

13 The email from Mr. Utech is addressed to
14 Lowry Crook, and the subject line reads, "Full Quote," in
15 bold.

16 And Mr. Utech, who is a -- at least a Daniel
17 Utech is a deputy assistant to the President of the United
18 States for Energy and Climate, Mr. Utech's email to Lowry
19 Crook, subject line, "Full quote," has what appears to be a
20 larger and more complete narrative of the President's
21 interview that Mr. Utech appears to think was necessary to
22 bring to Mr. Crook's attention. Do you see that?

23 A. I -- I -- if we can zoom in, please.

24 So Mr. Seby, I see the address line and what
25 you've highlighted there on the email being from Mr. Utech

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1 and going to Mr. Crook. I didn't catch where you're
2 referencing below it.

3 Q. Okay. There you go. So the reason I'm -- I'm
4 bringing this up to you is the prior exhibit we were just
5 talking about from Mr. Crook forwarded to Mr. Utech in the
6 White House was a, purported to be, that General Jackson was
7 asking about giving him an excerpt.

8 Mr. Utech is providing that same information
9 about that interview with the President of the United
10 States, which again was a video clip, and Mr. Utech is
11 giving more -- a more complete aspect of the transcript of
12 that video, it seems.

13 And so he presents, he starts with a question
14 posed by the interviewer, Mr. O'Donnell, Lawrence O'Donnell
15 with MSNBC, and then there are in response to those
16 questions, an answer is provided by a person noted in the
17 transcript, at least the excerpt provided here, has "The
18 President."

19 And so the question that -- just to elaborate
20 on what this email says here, is -- so you mentioned climate
21 change, and this is part of -- this is the interviewer
22 purportedly asking the President of the United States, "You
23 mentioned climate change, which is an issue that is hugely
24 important to our audience and young voters. One thing the
25 candidates aren't really talking about is the Dakota Access

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1 Pipeline. Is that something you would consider intervening
2 in? People have called for the administration to make a
3 call."

4 After that the line reads, "The President:
5 Well, right now, there is some litigation involved in it.
6 And I've been staying on top of it." Talks about point of
7 pride in his administration with Native Americans, and he
8 says, "My hope is we can find a way to resolve this.
9 Typically, what happens is, is that initially things at a
10 local level are worked on and we try to resolve them. If an
11 impasse is reached, then at some point it's something we
12 have to pay to" -- "attention to as well. We're monitoring
13 this closely. And" -- "and I think as a general rule, my
14 view is that there is a way for us to accommodate sacred
15 lands of Native Americans."

16 And he says, according to this transcript,
17 the next sentence, "And I think that right now the only
18 core" -- "the only core is examining whether there are ways
19 to reroute this pipeline in a way," he's interrupted by the
20 interviewer. I -- I think this sentence is odd.

21 Again, it's a transcript of a video interview
22 and I think that the "right" -- that "right now the only
23 core," do you think that the transcript messed up and it's
24 meant to say the Army Corps?

25 MS. ZILIOLO: Objection, foundation.

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1 Speculation.

2 BY MR. SEBY:

3 Q. General?

4 A. Yes, that would be my best guess, that should read
5 "the Army Corps."

6 Q. I wondered the same. And the President's saying
7 purportedly -- and I say purportedly because I have not
8 watched the video, have you?

9 A. No.

10 Q. Did you ever?

11 A. No.

12 Q. Okay. He goes on, or this quote attributed to the
13 President of the United States goes on to say, "The Army
14 Corps is examining whether there are ways to reroute this
15 pipeline in a way," and he got interrupted by the
16 interviewer, who said, "So this is a possibility?"

17 And, again, purportedly the transcript says
18 the President said, "So we're going to let it play out for
19 several more weeks and determine whether or not this can be
20 resolved in a way that I think is properly attentive to the
21 traditions of the First Americans."

22 And I understand what your -- your testimony
23 was about what -- what's the Corps authority and not with
24 respect to rerouting pipelines.

25 So I -- I just want to ask you about this,

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1 and I'm asking you because Mr. Crook forwarded this email,
2 you'll see at the top there, Lowry Crook, November 2,
3 forwarded to you, in a group, though, and that group
4 included the assistant secretary of the Army for Civil
5 Works, Ms. Darcy, Major General Jackson, you, and
6 Colonel Henderson. What do you think the point of that
7 forwarded email was? What -- do you know why -- why you
8 were sent this?

9 A. I think it was an attempt to give some additional
10 context to the President's remarks. Having just reviewed
11 what you've provided here, I don't think it addressed what
12 General Jackson was asking for.

13 As I said, we, the Corps of Engineers, does
14 not have the authority to reroute pipelines. And I think he
15 was looking for a way to correct -- how do we go about
16 correcting this statement that was made.

17 Q. Who is looking for a way to correct the statement?

18 A. So if you go back to the email, it would be
19 General Jackson raised this as an issue.

20 Q. Yeah.

21 A. And it would go back to Mr. Crook.

22 (Deposition Exhibit No. 355 was
23 marked for identification.)

24 BY MR. SEBY:

25 Q. Yeah. Okay. Thank you. If we could please turn

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1 to Exhibit 355.

2 All right. This is -- well, I have some good
3 news. This exhibit is only one email, it's not a chain, and
4 it's just one email and the email is from -- oh, shoot. I
5 apologize. I misspoke. This is a two-part email, so it's
6 not the worst we've seen, but it's -- it's not a singular
7 email.

8 It starts with an email from you, sir, to
9 Donald -- Major General Jackson on November 3rd of 2016.
10 And he replies to it above that.

11 So let's start with your email to Major
12 General Jackson. You say, "Sir, I believe you already have
13 the bulk of this from your conversation with John." Would
14 that be Colonel Henderson?

15 A. Yes.

16 Q. "He and I just spoke as he wrapped up his
17 discussions with the tribal chairmen." Would that be Dave
18 Archambault?

19 A. Yes.

20 Q. "John believes he found consensus on what is
21 essentially a 30 day cooling off period" -- "cooldown
22 period."

23 Do you know, this reference to consensus,
24 what parties did you mean to represent to Jackson --

25 A. Yeah.

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1 Q. -- as --

2 A. I'm sorry.

3 Q. I just wanted to understand what you meant as
4 parties, who are the parties at this point, to this
5 consensus that Colonel Henderson believes he found?

6 A. Mr. Seby, if I could just take a moment and read
7 the entire email.

8 Q. Oh, most -- most definitely. My apologies,
9 General. I will -- I will just be quiet for as long as you
10 need to read that entire string so we can talk about it.

11 A. If you could blow it up? Thank you. Okay. Yes.
12 Yes, sir, I've read it. Could you just repeat your
13 question?

14 Q. That -- that -- that second paragraph of your
15 email to Mr. -- or Major General Jackson says, "John
16 believes he found consensus on what is essentially a 30 day
17 cooldown period." Who -- who are you referring to as being
18 parties to this consensus, just the chairman at that point?

19 A. No, I think -- I think there's several parties
20 involved in this -- this particular arrangement. Certainly
21 for the chairman to provide time for that move that we
22 discussed for that camp south of the Cannonball, to -- to
23 properties on Standing Rock Sioux reservation, to focus on
24 that movement.

25 Secondly, for Energy Transfer Partners and

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1 their construction crews to suspend construction during
2 this -- during this -- during this time frame, and then also
3 for -- for law enforcement. If I remember, their support
4 arrangements from other counties, other states were about to
5 expire and they had to do some consolidation -- I may not be
6 using the right word as well -- but they had to consider
7 their next steps of how they were going to continue to
8 provide for public safety, given that some of their forces
9 were about to return to -- to their home.

10 So that was -- that was the idea here, was a
11 30-day suspension of efforts from -- from the protest side,
12 from the law enforcement side, and then also from the
13 construction side.

14 Q. Okay. And which law enforcement are you referring
15 to?

16 A. I'm referring to Morton County, state and local
17 law enforcement.

18 Q. Okay. So is it your testimony that the State of
19 North Dakota and Morton County told you that they were in
20 agreement with this cooldown period?

21 A. So they did not tell me this directly, I was
22 getting this from Colonel Henderson's engagements with --
23 with the three parties that I just described.

24 Q. So you didn't have firsthand knowledge of its
25 veracity or not?

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1 A. I did not have firsthand knowledge in these
2 particular discussions for the 30-day cooldown period,
3 that's correct.

4 Q. And what would happen to the camps during the
5 cooldown period? Would they immediately go away or would
6 they stay there and -- and they assume to behave themselves
7 during that 30-day cool off period?

8 A. So for the camps, what Chairman Archambault was
9 trying to do during this period, he was trying to get
10 separation from the peaceful protesters, those that had
11 stayed and were conducting themselves in a peaceful manner,
12 and separate themselves from some of the factions that were
13 in those camps that were more aggressive.

14 Q. Okay.

15 A. I think that was the -- one of his goals there.

16 Q. Aspirational, right?

17 A. Right. Because he also had the issue, as I
18 mentioned earlier, with his Tribal Council in getting
19 agreement to bring at least the peaceful protest factions
20 onto the Standing Rock reservation.

21 Q. Yeah. If that worked, that aspiration, where
22 would that have left the people who didn't wish to move off
23 of the camps on Corps property, but just stay there. Would
24 those people be uniquely non-peaceful?

25 A. I -- I my assessment is it would not change

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1 anything on that dynamic.

2 Q. Okay. So the bad guys would stay?

3 A. It was my assessment at the time that there
4 were -- there were protesters there that were very, very die
5 hard on this -- on this cause, and were not willing to move,
6 that's correct.

7 Q. I'm trying to understand the nature of the
8 strategy and aspiration that you were working with the
9 chairman to get people to move off of - off of camps plural,
10 on Corps property, when that strategy, it seems to have
11 contemplated a practical effect of leaving the bad guys on
12 Corps property. Where would that have left things?

13 A. I think it was the best of several less desirable
14 options. And I just go back to my earlier testimony whereas
15 my assessment, even if we had the resources, I'm speaking
16 we, the Army Corps of Engineers, had the resources to do, to
17 move folks off involuntarily, they would have just gone to
18 adjacent property, private property, state property, and
19 that would have just exacerbated the problem, it would have
20 exacerbated the tension.

21 So leaving them, yes, my assessment to leave
22 them where they were on Corps property was the least worst
23 of several bad decisions that we could have made.

24 Q. So just thinking through the -- the ideas here
25 that Colonel Henderson and you were -- were entertaining,

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1 how would that have worked if the bad guys stay, the
2 peaceful people leave and find a new home nearby, what do
3 you do with the bad guys left on Corps property and their
4 hard core behavior as you put it?

5 A. I -- I don't understand your question.

6 Q. I -- I'm trying to understand the practical
7 implications of this aspiration where you were -- and I
8 appreciate your saying this in the context of it was the
9 best of several less desirable and/or bad options, but I
10 don't -- I don't -- I'm trying to appreciate what you were
11 thinking, you and Colonel Henderson were thinking about and
12 thus informed Major General Jackson about, that there was
13 consensus on a strategy.

14 And I'm asking a question about what the
15 nature and aspect of that strategy was. Meaning, you were
16 trying to separate peaceful from non-peaceful people, and I
17 appreciate you have said that and I get it.

18 But isn't the implication of that that the
19 non-peaceful, hard core people, to use your word, would have
20 remained on the Corps of Engineers property?

21 A. Yes, I -- I don't -- my assessment is those --
22 those -- those groups would not have moved. Remember, this
23 was written on November 3rd, so it's starting to get cold in
24 North Dakota, and so the other benefit of getting people off
25 of these camps and onto -- onto the reservation where they

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1 had better access to services, was get them safely out of
2 the impending North Dakota winter. So that was another
3 benefit of this as well.

4 Ceasing construction was going to take the
5 temperature down on both sides of the protest community,
6 both peaceful and non-peaceful. And also it was -- it
7 provided a breather, I believe, for the law enforcement.

8 You're right, I don't disagree with you that
9 the strategy was not perfect, it didn't deal effectively
10 with -- with the more aggressive protest factions that were
11 out there, but again, we were trying to do all we could with
12 the resources that we had in a very challenging situation.

13 Q. I understand and appreciate your response. Had --
14 had -- had there been any discussion whether from you, sir,
15 or to you or dialogue with the chairman or others in the
16 United States Government that if this worked, and there --
17 you achieved this separation of good guys and bad guys, and
18 it left, the bad guys stayed on the Corps property because
19 they didn't want to be any part of any move to the
20 reservation, to the Standing Rock lands, what -- what was
21 the thought about what -- if then, if that happens, where we
22 succeed with that aspect of the strategy, what do we do with
23 the bad guys that are still on our land?

24 A. That's right. It's -- it's a question for -- for
25 law enforcement.

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1 Q. And did you talk to them about that?

2 A. We did. A number of conversations with, as I
3 mentioned with chairman -- I'm sorry -- Sheriff Kirchmeier,
4 the state adjutant general, it was not long after this,
5 within a few weeks that I had made my first request to my
6 boss, General Semonite, for federal law enforcement support
7 to deal with just this issue that -- that you were
8 describing.

9 Q. So that's where the -- that's what hatched the
10 idea for the Corps being a party to a request for federal
11 law enforcement assistance?

12 A. Right. I think we were reinforcing what the
13 governor had requested of the President, what Morton County
14 had requested of law enforcement -- federal law enforcement,
15 we were just adding to that -- that request with our letter
16 to General Semonite.

17 Q. General, is your testimony that you're
18 representing that the State of North Dakota backed this
19 consensus, that you're telling Major General Jackson that
20 Colonel Henderson was negotiating with the chairman? Are
21 you saying the governor of North Dakota at the time,
22 November 3rd, 2016, endorsed that?

23 A. So at bottom of this email it mentions that
24 Colonel Henderson was going to follow up on this concept
25 with the governor, and I -- sorry, I don't recall the

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1 outcome of -- of that session.

2 Q. And I appreciate your telling me that, but it
3 wasn't the question. The question is, is it your testimony
4 that you are saying the governor of North Dakota, in your
5 opinion, endorsed this strategy?

6 A. No, at the time of this email I didn't know the
7 governor's position on this strategy.

8 Q. Thank you. How about after this email, did you
9 ever learn that was your view of the governor's position?

10 A. I -- I do not recall.

11 (Deposition Exhibit No. 356 was
12 marked for identification.)

13 BY MR. SEBY:

14 Q. Okay. If we could turn to Exhibit 356, please,
15 and this is another email where we -- we got multiple parts
16 of a ongoing dialogue sent to us by your counsel, and thus
17 the need for me to raise it with you as separate exhibits.

18 Exhibit 356 is a continuation of a portion
19 of your -- no, it follows on, if you look at the screen, the
20 first part of this email chain in this new Exhibit 356,
21 begins with your email to Major General Jackson that we just
22 discussed, talking about Colonel Henderson's belief that he
23 found a consensus on essentially a 30-day cooldown period.

24 Then you forwarded your email to
25 Major General Jackson on to Colonel Henderson and said,

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1 "John - FYI, and feel free to correct/adjust as needed.

2 Thanks for all you are doing in this difficult situation."

3 And then Colonel Henderson, the next portion
4 of this email chain responds to you saying, "Sir, just a few
5 items to add at this point. After we talked, I called the
6 Governor's Chief of Staff. Will meet with the governor and
7 Major General Dohrmann in the morning. I explained to him
8 all below," and I think he's referring to the Chief of
9 Staff, "he," the Chief of Staff, "believes that the governor
10 will support a cooling off period contingent upon DAPL's
11 buy-in and clarity on the easement decision."

12 Then there's some talk about Energy Transfer
13 discussions Colonel Henderson had. And then the email goes
14 on to say, "Tomorrow my goal is to double back with the EOC
15 and Major General Dorman (sic), meet with the governor and
16 close out with calls to both Senators and the Congressmen.
17 Would expect to see Congressman Cramer and Hoeven" --
18 "Senator Hoeven in the Governor's meeting."

19 That's late in the evening on November 4th.
20 And you write in reply to -- to Colonel Henderson, the next,
21 you reply to him and say, "We are fortunate to have you,
22 John. Please, do not pay any attention or 'sweat' the
23 Cheyenne letter."

24 General, what Cheyenne letter are you
25 referring to? Do you recall?

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1 A. I -- I don't recall.

2 Q. Then you go on to say, "Army leaders all the way
3 to the top understand the heavy lifting that you are doing
4 here." What heavy lifting are you referring to that
5 Colonel Henderson is doing here?

6 A. Well, so if you look at the last email you can see
7 that he is writing me at 1:28 in the morning, so a lot of
8 long days for Colonel Henderson.

9 Q. Yeah?

10 A. Working through a very big issue that was getting
11 national attention, and he was at the center of it all. And
12 that's what I meant.

13 Q. Understood. The last email in the chain, if
14 you'd -- if we can scroll up to that, please, would you take
15 a moment, sir, and read that, please.

16 A. Yes. Could you scroll down, please. Okay. Thank
17 you.

18 Mr. Seby, I've finished reading.

19 Q. Okay. Thank you, sir. So this top email is from
20 Colonel Henderson to you, General Spellmon, and it's the
21 same day, later in the same day, appears to be a very long
22 day for Colonel Henderson, November 4, 2016, and the re line
23 is, continues to be "De-Brief from Colonel Henderson."

24 And he reports on meetings with General
25 Dohrmann, the governor and Senator Hoeven, and he still has

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1 calls scheduled with Heitkamp and Congressman Cramer that
2 evening.

3 He says, "All are supportive of the idea," I
4 guess that's understood in the context that he's still
5 talking to a senator and a congressman later after this
6 note, but I guess he's saying, All so far are supportive of
7 the idea, but skeptical that the Administration will support
8 sending the easement forward to Congress, more skeptical
9 that the Tribal leaders will do anything to help, and most
10 skeptical that we can affect their requests for federal law
11 enforcement support.

12 So it's an interesting way to deliver a
13 positive statement that there is support of the idea. And
14 then he goes on to say there's three levels from mild to
15 worst skepticism. Is that how you read how he phrased all
16 that?

17 A. Yes, Mr. Seby. And just some additional context.
18 So at this point we're in early November. We had already
19 turned in, I mentioned the technical responses to the six
20 questions that we had received from the assistant
21 secretary's office, and I don't remember the exact date, but
22 it was somewhere around this time frame where we received an
23 additional four questions that required more analysis and
24 work.

25 And so I believe that was feeding the

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1 skepticism that the elected leaders in North Dakota were
2 feeling about the topic of the easement ever going forward.
3 The -- I believe it was at this point the governor had
4 already made his requests to the President for federal law
5 enforcement support. I do not believe it had been acted on
6 in a way that was I guess acceptable to the -- to the
7 governor. And they were skeptical of the Tribal leaders, as
8 they -- as John shared here.

9 Q. Yeah. General, you referenced -- first you got
10 six questions and you spent a lot of time and effort
11 marshaling responses to those. I don't know, couple, a
12 month or two went by after that, didn't it? And then you
13 got four more?

14 A. Yes, sir. And I -- Mr. Seby, I don't remember the
15 exact timeline, but there was an additional set of four
16 questions that came -- that followed.

17 Q. Did the additional four come from the same source
18 as the first six?

19 A. I believe they did. I believe they came from the
20 assistant secretary's office.

21 Q. Ms. Darcy?

22 A. Yes.

23 Q. And these questions, if I remember the first
24 category of six that you referenced, they were with respect
25 to why did Colonel Henderson and the Army Corps of Engineers

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1 approve an environmental assessment.

2 And then the joint agency statement said,
3 yeah, we -- we know the Corps finalized the environmental
4 assessment, but we're going to pause now and reconsider
5 that.

6 So then Ms. Darcy submitted six questions to
7 the Corps professional staff saying why did you do A, B and
8 C through whatever 6 is, F, and then you answered those,
9 they sat with the sec -- the Assistant Secretary Darcy, then
10 she put out four more?

11 A. That -- that's correct. So, and I don't remember
12 the exact questions, as I've said, but everything from more
13 technical feedback on some of the analysis that we provided
14 in the EA, and then other cases to clarify some of the legal
15 substantiation for the -- the findings in our -- our -- in
16 our report.

17 Q. Have you, in your experience in the Army or the
18 Corps more specifically, ever seen anything like that
19 happen, where the Corps makes a final decision, one that's
20 entrusted to the district, and then have it announced at a
21 national level that -- that action on the finalization of an
22 easement based upon an environmental assessment was -- was
23 suspended due to reconsideration, and that process went like
24 this, where there were questions and more questions and
25 passage of time and more passage of time, you ever -- ever

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1 experienced anything outside of the DAPL context where that
2 occurred?

3 A. No, not -- not to this extent.

4 Q. So this was -- this stood out as unique to you?

5 A. Yes, I mean we -- we send reports up all the time,
6 we receive reports all the time from field, often there are
7 technical questions that we'd like more information on, but
8 generally that is coming from our engineers and the
9 scientists in the Corps, not technical questions coming back
10 from appointees. So that's -- that's what was different
11 here.

12 Q. So are you saying, General, that there was
13 something unique about the manner in which this occurred and
14 the source of the -- the revisiting, second-guessing, I
15 don't know, asking you to explain yourself, coming from
16 political appointees?

17 A. Yes, this -- this was unique.

18 Q. Were you the only one amongst your Corps senior
19 colleagues to observe that?

20 A. I think you saw the note from General Semonite had
21 a sense of that, certainly General Jackson who was working
22 with this with us each and every day, likely shared that
23 assessment.

24 Q. I understand. How about a short break, sir?

25 A. Yes, thank you.

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1 MR. SEBY: Ms. Zilioli, is that okay?

2 MS. ZILIOLO: That sounds great. Thanks.

3 MR. SEBY: All right. Let's resume in ten,
4 please.

5 THE VIDEOGRAPHER: Okay. Going off the
6 record at 2:25.

7 (Recess taken.)

8 THE VIDEOGRAPHER: Going back on the record
9 at 2:40.

10 (Deposition Exhibit No. 359 was
11 marked for identification.)
12

13 BY MR. SEBY:

14 Q. General Spellmon, we're back after a short break,
15 sir, and I'd like to call up Exhibit 359, 359. This is an
16 email, General Spellmon, from you to rrausche@nd.gov, and
17 alan.s.dohrmann.mil@mail.mil, and it's copied to
18 Colonel Henderson. Is -- is do you know the individuals
19 that you addressed this to? Can you identify their full
20 names?

21 A. Yes. I believe Mr. Rausche (sic), I believe it's
22 Ron Rausche, was on the governor's staff and Alan Dohrmann
23 is General Dohrmann, the North Dakota state adjutant
24 general.

25 Q. Okay. I'm asking do you know is

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1 Mr. Rauschenberger, is that the correct name?

2 A. Yes, sir. You're -- you're correct.

3 Mr. Rauschenberger. Thank you.

4 Q. And do you know whether he was at this time,
5 November 9, 2016, the chief of staff of the governor of
6 North Dakota, Jack Dalrymple?

7 A. Yes, sir, that is correct.

8 Q. Okay. And General Dohrmann was the adjutant
9 general of the State of North Dakota?

10 A. Yes.

11 Q. Okay. And there's an attachment here, the subject
12 line of your email says, "DAPL OP-ED (Spellmon)." And the
13 attachment here is a document that is not dated. Do you
14 know the date of this document, the attachment?

15 A. I don't know the exact date. Certainly it was
16 prepared in concert with this email in early -- early
17 November.

18 Q. Okay. Is what we're seeing on this email a draft
19 of something that later was finalized?

20 A. Yes, this may have been the -- the -- the final
21 copy. I'm sure this was a draft, I was asking for their, if
22 they had any input.

23 Q. Did they respond to your email at all? I don't
24 have a -- anything that advises me one way or the other. Do
25 you know?

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1 A. Mr. Seby, from the best of my recollection both
2 Mr. Rauschenberger and General Dohrmann supported us going
3 forward with this particular op-ed.

4 Q. And when you say op-ed, are you talking about an
5 opinion editorial?

6 A. Yes.

7 Q. And since -- since from at least what I have here,
8 I don't know whatever happened to this, and your attachment,
9 the document name says "Final," so what did you do with this
10 after you sent it to them and -- and, A, did they give you
11 feedback, and if so how. Verbal or --

12 A. I don't -- from the best of my recollection it was
13 a brief email from each that they supported going forward
14 with this as I stated.

15 Q. Okay. Okay. And then did you edit the article at
16 all, or was it -- was it sent off to be published somewhere?

17 A. Can I just scroll down --

18 Q. Oh, yeah.

19 A. -- to review? Thank you. Keep scrolling down.
20 And once more. Yep, that's it. This looks like the final
21 that went out. And you asked, I believe it was published in
22 the Omaha World-Herald shortly after, early to mid November.
23 I don't recall the exact date.

24 Q. Any other media outlets pick this up?

25 A. I don't recall if other media ran with this.

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1 Q. Okay. Did you ever give any television or other
2 videotaped interviews that related to this op-ed?

3 A. Not directly related to this op-ed. I did a media
4 interview with a local station in Portland following one of
5 the protests at my home, but large -- much of the same
6 messages that I shared with that -- with that station are --
7 are -- are included in this opinion editorial.

8 Q. Okay. And were you the sole author of this
9 document, sir?

10 A. I was a primary author. I am certain I had helped
11 from Ms. Gaskill, who was my public affairs officer in
12 Northwest Division, and she was on several of the previous
13 emails --

14 Q. Yes.

15 A. -- that you showed us.

16 Q. Ms. Amy Gaskill?

17 A. Yes.

18 Q. Got it. Okay. What was your intention in
19 developing this -- this op-ed?

20 A. Yes. So, and I don't remember what day this went
21 out, but there was a -- a Tuesday shortly after I sent this
22 note to General Dohrmann and Mr. Rauschenberger, it was
23 identified as a National Day of Protest against DAPL, and
24 these are the protests I mentioned earlier where we had
25 groups large and small showing up in front of our district

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1 and our regional headquarters throughout the country.

2 This was an attempt to inform the public on
3 what the roles and responsibilities are on a project such as
4 Dakota Access Pipeline and what our roles and
5 responsibilities aren't. So it was an attempt to inform the
6 public in advance of this national day of protest.

7 Q. Yeah. November 9th, if -- if -- I understand you
8 said the protests on Corps property began approximately mid
9 August, here we are in about the same part of the month,
10 three months later.

11 What was it that about -- about the -- this
12 particular time period other than the -- you were a little
13 less than a week prior knowing that there was going to be a
14 national day of protest. Was this your thought on setting
15 the record straight in a certain respect?

16 A. No, this was an effort to inform the broader
17 public, up until this point from my recollection we were
18 sharing these same messages with everyone that we were
19 dealing with in -- in North Dakota, in our headquarters, and
20 in the secretary's office, to inform -- and as I mentioned,
21 even our own workforce.

22 We thought of the op-ed, again, what drove it
23 was this National Day of Protest, and again, just in effort
24 to inform the broader public on what -- what this was about.

25 Q. And why did you feel the need to do that?

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1 A. There were going to be protests scheduled across
2 the country.

3 Q. You wanted to get ahead of that?

4 A. I wanted to get -- I wanted to make an effort to
5 inform the public, yes.

6 Q. Okay. Again, I -- I'm not questioning any of your
7 goals, I just am trying to understand the context of this
8 when and why, what you were thinking. Okay. Okay. Do you
9 think it was helpful or effective?

10 A. I -- I don't know.

11 Q. Yeah.

12 A. Those protests still happened, I don't think it
13 did anything to change people's mind, but that's hard to
14 judge.

15 (Deposition Exhibit No. 361 was
16 marked for identification.)

17 BY MR. SEBY:

18 Q. Yeah, sure. If we could please go to Exhibit 361.

19 General Spellmon, this is another compound
20 email chain. It's got four parts to it.

21 Would you please turn to the -- the very
22 beginning portion of it at the bottom of the -- of the
23 exhibit, it's an email from General Jackson to General --
24 Ms. Darcy and Chief Semonite and Mr. Crook, and you're
25 copied on it, and so are other Corps individuals including

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1 Colonel Henderson.

2 And Major General Jackson's email is subject
3 matter, "DAPL Update" dated November 25, 2016, and it's
4 addressed to "Madame Secretary and Chief." The Madame
5 Secretary would be to Ms. Darcy?

6 A. Yes.

7 Q. And Chief would be to Lieutenant General Semonite,
8 is that accurate?

9 A. That's correct.

10 Q. Okay. Do you want to take a moment and read that,
11 sir?

12 A. Yes, please.

13 Q. Oh, yeah, as you -- as you need.

14 A. Can you just scroll up a bit? I missed the top of
15 that first paragraph. Thank you. Right there. Can you
16 scroll down, please? Just back up briefly. Thank you.
17 Okay. Thank you. Can you scroll up to the next response.
18 Right there.

19 All right. Can you scroll up, please. Just
20 down briefly. I'm sorry, I missed General Jackson's reply.
21 Thank you. Okay. And all the way up.

22 Okay, Mr. Seby, I've read it. Thank you.

23 Q. Okay. Thank you, sir. Let's go back to the first
24 part of the chain and General Jackson's email to Ms. Darcy
25 and Chief Semonite. November 25, 2016. Is it correct the

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1 election would have occurred by that time?

2 A. I -- I don't know.

3 Q. The presidential election?

4 A. Yes.

5 Q. Okay. I -- I -- I believe that to be true as
6 well.

7 A. Yes.

8 Q. So that would mean Ms. Darcy knows her period end
9 for her appointed position is drawing near, right?

10 MS. ZILIOI: Objection, calls for
11 speculation.

12 A. Yeah, I don't know what Ms. Darcy thought.

13 BY MR. SEBY:

14 Q. Let me withdraw the question and observation
15 and -- and move on. I want to ask you about the second
16 paragraph of Major General Jackson's email.

17 First of all, do you recall this email,
18 General Spellmon? You're copied on it.

19 A. Yes, I -- I recall the email and the -- both of
20 the letters that are referenced here.

21 Q. Yeah. Did you have a role in developing this
22 draft document, this draft email to the secretary?

23 A. No.

24 Q. General Jackson wrote this all by himself?

25 A. I did not provide any language or drafting to him.

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1 Q. Did anyone else?

2 A. I don't know.

3 Q. Okay. The second paragraph, if we could focus on
4 that, it's called "Closure of Public Lands," plural. And
5 that -- that paragraph says, "On November 25, 2016,
6 Colonel Henderson notified," past tense, "16 Tribal Chairman
7 that he is closing the portion of Corps-managed federal
8 property north of the Cannonball River to all public use and
9 access effective 5 December 2016."

10 "This decision is necessary to protect the
11 general public from the violent confrontations between
12 protesters and law enforcement officials that have occurred
13 in this area, and to prevent death, illness, or serious
14 injury to inhabitants of encampments due to the harsh
15 North Dakota winter conditions.

16 "This means that no member of the general
17 public, to include Dakota Access Pipeline protesters, can be
18 on these lands" -- or "these Corps' lands. The Corps of
19 Engineers has established a free speech zone on land south
20 of the Cannonball River for anyone wishing to peaceably
21 protest the Dakota Access Pipeline project subject to the
22 rules of 36 C.F.R. Part 327.

23 "In these areas jurisdiction for police, fire
24 and medical response, is better defined making it more
25 sustainable" -- "making it a more sustainable area for

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1 visitors to endure the harsh North Dakota winter.

2 "Any person found to be on the Corps' lands
3 north of the Cannonball River after December 5, 2016 will be
4 considered trespassing and may be subject to prosecution
5 under federal, state and local laws."

6 I won't go on to read the rest of the
7 paragraph, but I want to ask you about the statements that
8 we just covered. This -- this email reads as an after-the-
9 fact report to the secretary. Is that a fair understanding?

10 A. If we could just scroll back to see the date on
11 the email.

12 Q. It's November 25.

13 A. Just looking for the -- the time. So it's written
14 at 4:48 and, yes, the letters were distributed earlier in
15 the day, that's correct.

16 Q. Okay. And were those letters prepared and vetted
17 in the vertical chain that you were referencing being the
18 normal Army protocol?

19 A. I believed that these were coordinated up to
20 General Jackson and the headquarters level. I don't know
21 that they were coordinated above General Jackson, I -- I
22 just don't know.

23 Q. When you were talking about vertical coordination,
24 would that have been normal or would that have been a
25 different aspect of the coordination?

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1 A. I think we had all the authority we needed. We
2 did not need any -- this is not policy that we were setting,
3 so no, I don't think it was unusual that if these were not
4 mentioned previously to the secretary's office, this was
5 within -- within our authority to do.

6 Q. Yep. Okay. The sentence says that -- it's --
7 it's midway in the paragraph, "The Corps of Engineers has
8 established a free speech zone on land south of the
9 Cannonball River for anyone wishing to peaceably protest the
10 pipeline." Anyone.

11 So this would be -- can you explain how that
12 process occurred and what the purpose of it was?

13 A. Yes. So I may have mentioned earlier that this
14 particular -- now we're getting to December, it's getting
15 colder, and there are other risks that we have to contend
16 with.

17 So this was an effort to get people off of
18 the -- that land north of the Cannonball, bring them down
19 south of the river, closer to Tribal law enforcement, closer
20 to Tribal fire and medical support, just to reduce the risk
21 on the public that was there as part of the other protests.

22 Q. And so when it says here that -- the invitation to
23 come to the free speech zone that the Corps established on
24 lands south of the Cannonball River, do you know, General,
25 whether or not the Corps designated a specific area for that

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1 free speech zone?

2 A. I don't -- I don't recall the exact delineation of
3 where that -- where that parcel lied. I would have to go
4 back and refresh my memory on some maps.

5 Q. Do you happen to know if it was the same area that
6 the -- that the Standing Rock Sioux Tribe sought by way of
7 application for a special use permit?

8 A. It may have. I -- I don't recall.

9 Q. And here it says that the Corps was inviting
10 anybody who wished to peaceably protest. So how -- how
11 would you know whether the people that were invited who
12 showed up were good guys or bad guys?

13 A. You wouldn't know.

14 Q. Know-it-when-you-see-it kind of thing?

15 A. You would know it when you saw that behavior.

16 Q. Okay. And when it says the invitation for the
17 people to come to the Corps property were subject to the
18 rules of 36 C.F.R. Part 37 (sic), is that the same Title 36
19 that you were talking about before?

20 A. I believe it's the same.

21 Q. Okay. And do those rules require a special use
22 permit prior to entering upon and using Corps land?

23 A. In this case I -- I don't know if -- what the
24 district commander had in mind. Clearly there's not an
25 applicant putting this forward. This was an initiative on

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1 part of the district to set aside land. It may not have
2 required a special use permit, since there was so many
3 potential groups that might move into this particular piece
4 of ground.

5 Q. Is it your testimony that the Corps gave written
6 permission to people to come on to the Corps property and
7 stay there and camp, build fires, build structures,
8 temporary or otherwise, drive cars on, cook, hunt, fish?
9 Was there a written authorization provided by
10 Colonel Henderson to do any of those things?

11 A. The email here mentions a letter that went to 16
12 Tribal chairmen and from my recollection it included
13 language similar to what you see here. All of this was
14 subject to the rules of 36 C.F.R. Part 327 or Title 36.

15 Q. So is -- is the -- is the Colonel Henderson
16 invitation to people to come onto Corps property,
17 notwithstanding seeking and getting a special use permit, is
18 he giving a written permission to the 16 Tribal chairmen for
19 they and their members to do that?

20 A. Yes.

21 Q. So it's your testimony that Colonel Henderson's 16
22 letters were the written permission to enter upon and use
23 Corps land?

24 A. I understand that's the -- that's the purpose that
25 those letters served, yes.

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1 Q. Okay. So given that testimony, I -- I have a
2 question. When it says here that the Corps established a
3 free speech zone on land south of the Cannonball River for
4 anyone, does anyone mean anyone, in addition to the people
5 that are under the leadership of the Tribal chairmen, the
6 16?

7 A. I read it as anyone wishing to peacefully protest.

8 Q. You read this statement as that?

9 A. Yes, that's how I read it. That's how I interpret
10 it.

11 Q. Is that the same interpretation you give to
12 Colonel Henderson's letters to the 16 Tribal chairmen?

13 A. Yes.

14 Q. You, Mr. Chairman, and anybody else you want?

15 A. Yes, that's how I would interpret Colonel
16 Henderson's letter.

17 Q. So at that level it was an invitation to any
18 citizen of the world to come on to the Corps property?

19 A. Anyone who had a desire to peacefully protest.

20 Q. Anyone. Anyone.

21 MS. ZILIOI: Objection, asked and answered.

22 BY MR. SEBY:

23 Q. Okay. So the next email, sir, in the chain is
24 after you were copied on the Donald Jackson's email to the
25 secretary and the chief, the next email in the chain is an

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1 email from you later that day to General Jackson and
2 Jennifer Greer. Who is Ms. Greer?

3 A. Jennifer Greer was our leader of what we call our
4 Future Directions branch. And she coordinates a lot of the
5 engagements that we do with congressional leaders.

6 Q. And the branch that you're referring to, is that a
7 headquarters branch or a Northwest Division?

8 A. It's a U.S. Army Corps of Engineers headquarters
9 staff element.

10 Q. Okay. And why did you include Ms. Greer?

11 A. It was becoming apparent, again, national level
12 protests, that there were other congressional members that
13 were likely asking questions of the Corps headquarters, and
14 I thought it would be a good time to include her on some of
15 this latest dialogue.

16 Q. Okay. Understand. And then your -- your email to
17 General Jackson responding to his email to the secretary and
18 the chief that you were copied on, you say, "Sir - as you
19 state below, this action was pre-coordinated with ND
20 leadership." Who are you referring to?

21 A. I'm referring to North Dakota leadership, the
22 governor's office with General Dohrmann, and I believe even
23 with -- with Morton County law enforcement.

24 Q. Did you do the coordinating?

25 A. This was conducted by Colonel Henderson, I do

1 not recall if I made specific calls to any of the
2 congressional members or the governor. There are many times
3 Colonel Henderson and I had to split up the communication
4 responsibilities. On this particular one, I don't remember
5 the division of labor. I may have, I just don't recall
6 specifically.

7 Q. Okay. And -- and what did you mean by "this
8 action"? What action are you referring to?

9 A. The distribution of the two letters.

10 Q. Letter 1 was -- was which letter?

11 A. There was one letter that we mentioned that went
12 to the 16 tribal chairmen, and the second letter dealt with
13 a clarification of jurisdiction and law enforcement.

14 Q. And who did that letter go to?

15 A. If I can see the letter, I -- I don't remember
16 exactly who it was addressed to. But if we have that, I can
17 refresh my memory.

18 Q. If we could go back to the initial email in this
19 string, the one from General Jackson to Ms. Darcy and the
20 chief, there is a section called "Law Enforcement
21 Jurisdiction" just below the "Closure of Public Lands" --

22 A. Yes.

23 Q. -- paragraph we were reading. Did you read that
24 already or would you like to?

25 A. I read it already.

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1 Q. Okay. So there, the news is that -- the news
2 being shared with the secretary is that earlier that day
3 like the letter to the 16 chairmen, Colonel Henderson sent a
4 separate letter, sounds like, to the sheriffs of Morton and
5 Emmons County, North Dakota, answering several questions
6 raised to Colonel Henderson earlier in the week by
7 Major General Dohrmann is that -- and the U.S. attorney for
8 North Dakota.

9 A. John Dohrmann is state -- state adjutant general.

10 Q. Yes. Yeah. Okay. And that's the second letter
11 you're referring to?

12 A. Yes.

13 Q. Okay. If we could go back to your -- your
14 follow-up email to General -- Major General Jackson, please,
15 where you say "This action was pre-coordinated," and then
16 you go on to say, "Senator Heitkamp called Colonel Henderson
17 a few minutes ago. John shared with her the notes from our
18 EXSUM." What is EXSUM? What does that acronym mean?

19 A. Executive summary.

20 Q. And is that the email, General Jackson's email to
21 Secretary Darcy?

22 A. I believe -- not necessarily that exact email, but
23 the -- the notes on both of the -- the letters.

24 Q. Okay. And then you go on to say, "Given the
25 dynamics in the state." What is that referring to?

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1 A. So what I mean there, there were times when we had
2 to call Senator Hoeven and Senator Heitkamp at exactly the
3 same time. We -- we ran into some friction when one of
4 those elected leaders had information before the -- the
5 other.

6 And so, I mentioned we were dividing up our
7 communication responsibilities between Colonel Henderson and
8 myself, we'd attempt to hit all of them in as close to the
9 same time frame as possible. That's what I meant by the
10 dynamics.

11 Q. Okay. Then you go on to say, "We are providing
12 the same general update to the governor's chief of staff and
13 Senator Hoeven's staff. Again, this will not come as a
14 surprise to them, but a welcome action."

15 And so you're saying that the closure, the
16 action to close the North Camp would be welcomed?

17 A. Yes. And it was not a surprise because we had
18 already been talking to the members and their staffs on both
19 of these letters and this next set of actions that we were
20 working through.

21 Q. And the -- are you saying that -- are you telling
22 General Jackson that they would welcome and not be
23 surprised, the aspect of that news that did not close the
24 camp or camps on the south side of the Cannonball River, but
25 in addition to not closing those camps, invited protesters

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1 to come on to a free speech zone on Corps property, they
2 would welcome that?

3 A. Yeah. They would welcome the action of our
4 efforts to take protesters off of the land north of
5 Cannonball and get them closer to Tribal properties where
6 the Tribal public services could -- could take care of that
7 population, and I would say not have to rely as much of
8 those from the surrounding counties.

9 Q. Sure. My question was not that, though. It was,
10 do you think that they would welcome the aspect of your
11 closing the northern camps, announcing that you would do
12 that by December 5?

13 I appreciate that they were not -- that they
14 welcomed that, but I'm asking you, are you representing to
15 General Jackson that the governor and the members of his
16 staff and office including General Dohrmann and Morton
17 County also, quote, welcomed the Corps notification to
18 all -- anyone wishing to peaceably protest that they could
19 come on to the Corps property for that purpose?

20 A. I don't remember specifically their reaction on
21 that -- that aspect.

22 Q. So -- so you don't know if they'd welcome it or
23 not. You're -- you're -- you're -- you're saying, your
24 testimony, sir, just so I'm clear, is not that they would
25 welcome that aspect of the letter, they didn't know about

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1 it, is that accurate?

2 A. Nope. So these draft copies of these letters were
3 shared with each of these members' staff. I do not remember
4 getting any pushback on the -- the aspect that you're
5 outlining here, but again to my recollection I don't
6 remember any significant concerns. They were -- they were
7 more pleased on the broader action we were taking to -- in
8 an effort to clear off that northern camp.

9 Q. Okay. But you -- you don't, is it, are you
10 telling me that you don't recall with any specificity
11 whether they -- whether they welcomed the idea of leaving
12 the southern, the camps on the southern side of the river in
13 place, not evicting them, and setting up another free -- a
14 separate free speech zone for people to come on to the Corps
15 property to protest?

16 A. No, I don't believe they -- they -- they opposed.

17 Q. They didn't oppose, but did they tell you, General
18 Spellmon, that's a great idea, we're -- we're all in,
19 totally support it. Did you hear anyone tell you that?

20 A. No, I think they would support everyone going
21 home. And that's what they -- that's what they wanted. Of
22 course, we're dealing in the real world and we're trying to
23 make steps with the resources that we had.

24 But no, I do not remember, again, any
25 specific pushback or concern on that aspect of this -- of

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1 this plan.

2 (Deposition Exhibit No. 362 was
3 marked for identification.)

4 BY MR. SEBY:

5 Q. Okay. All right. If we could go to Exhibit 362,
6 please. So this is -- it starts with, this is a chain of
7 emails, it's got five. This may be our -- our lead
8 candidate for the award-winning largest number of aspects of
9 a compound email, but this is, it starts with the -- Major
10 General Jackson's email that we just talked about in the
11 earlier exhibit, exhibit prior to this, 361, where General
12 Jackson writes, "Madame Secretary and Chief," to General
13 Semonite and to Secretary Darcy.

14 And the next one after he sends that email,
15 which we've read, Ms. Darcy writes back, copies all of the
16 recipients of General Jackson's email. And she says, "Major
17 General Jackson, I assume the letters/notification were
18 coordinated with the Department of Justice and the Bureau of
19 Indian Affairs. I would like to see copies and what the
20 communication plan is for these actions." Is her assumption
21 correct?

22 A. I -- I don't recall. What I do remember is that
23 we were working this with the North Dakota representatives
24 in DOJ, and the local representatives in Bureau of Indian
25 Affairs. I do not recall if we worked this at the national

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1 level back here in Washington, D.C. I don't recall.

2 Q. Okay. And so in response to her inquiry to
3 General Jackson, General Jackson writes back to Ms. Darcy,
4 same day, hour or so later, and he says, "Ma'am," and he
5 copies the same group that was on her reply to his initial
6 email.

7 And he says, "Ma'am. Just received this from
8 Brigadier General Spellmon. The jurisdictional letter of
9 Morton County" -- to the Morton County Sheriff -- "was
10 written in coordination with, and with the advice of the
11 U.S. Attorney's Office in North Dakota."

12 "The letter to the chairman" -- the Tribal
13 chairmen, 16 -- "was coordinated with state leadership and
14 the BIA representatives in the ND State EOC. There is no
15 formal communication plan developed for this, however, the
16 district is closing the loop with state leadership,
17 congressional members, and other stakeholders on the ground.

18 "The plan is to use the executive summaries
19 provided earlier as our talking points. These reflect the
20 contents of the letters almost verbatim, minus the
21 pleasantries."

22 So when you say the executive summaries, our
23 talking points, so that's -- that's -- that's where you
24 would have our explained perhaps the distinction between
25 closure of the North Camps and non-closure of the South

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1 Camps on Corps land, is that accurate?

2 A. I think what we're referring to here is larger
3 than just that -- that topic. This was referring to --

4 Q. Did it include that topic?

5 A. I'm certain it did, yes.

6 Q. Okay. And then you reply to just General Jackson
7 the following morning, Saturday, and you say, "Sir, I am
8 unsure if you will need to talk today. I am en route back
9 to Portland and will arrive 1500 Eastern."

10 He wrote back to you, "Safe travels, Scott.
11 I will drop a note if we need to catch up. Hope you are
12 unable" -- "hope you were able to enjoy some of the
13 holiday." That would be the Thanksgiving holiday, wouldn't
14 it?

15 A. Yes, I traveled to Detroit to spend it with
16 family.

17 Q. Yeah. And Major General Jackson goes on to tell
18 you, "Nothing heard since launching my note to the
19 Secretary. Not unusual. More unusual she responded in the
20 first place."

21 What do you think he meant by those two
22 statements?

23 A. I -- I don't know the relationship or the
24 communication practices between General Jackson and
25 Ms. Darcy. I -- I -- I don't know.

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1 Q. Okay. He just was sharing those with you, his
2 comment, right?

3 A. Yes. I -- I don't have any context for -- for
4 those -- for those words.

5 (Deposition Exhibit No. 363 was
6 marked for identification.)

7 BY MR. SEBY:

8 Q. Yeah, okay. If we could go to Exhibit 363. This
9 is a continuation of your personal dialogue with
10 Major General Jackson that we just covered in Exhibit 362,
11 and I bring it up because this is a separate document
12 provided to us where you respond to Major General Jackson
13 after he says "Safe travels," et cetera. "We talked about,"
14 and you say, "Sir," here, and this is Exhibit 363, "Sir, I
15 acknowledge all and WILCO."

16 Does WILCO mean will comply? I forgot what
17 that acronym stands for?

18 A. You have it right. It means will comply.

19 Q. Okay. Thanks. "I have an office call with
20 Governor Dalrymple in Bismarck on Tuesday afternoon. We
21 were scheduled to discuss the Missouri River draft
22 environmental impact statement forthcoming in January, but
23 more likely will discuss our federal law enforcement request
24 and timeline. Will keep you posted."

25 What does that mean? But more likely we'll

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1 discuss our federal law enforcement request and timeline?

2 A. Yes. So first of all, we were meeting with all
3 eight governors in late November on the Missouri River basin
4 on a draft EIS that I may have mentioned earlier, draft
5 environmental impact statement that we had prepared to help
6 us better achieve our Endangered Species Act
7 responsibilities on the Missouri River.

8 We had a requirement to brief all the
9 governors on that before putting that out on for public
10 comment. That was the scheduled purpose of this meeting.
11 We did -- I recall we did cover that material with Governor
12 Dalrymple, and then we did go into the federal law
13 enforcement request that the state asked us to submit to
14 reinforce the request that the governor made to President
15 Trump at that time, that that's what I'm referring to here.

16 Q. Okay. So late November -- late November of 2016,
17 the Obama administration was in place and would remain in
18 place --

19 A. I'm sorry. I'm sorry.

20 Q. -- remain in place. So I'm confused by your
21 reference to request to President Trump?

22 A. Sorry, I meant President Obama. My apologies.

23 Q. So you're talking with the governor about the
24 Corps of Engineers asking for federal law enforcement
25 assistance to the President of the --

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1 A. Yeah.

2 Q. -- United States?

3 A. No, the governor had made that request to the
4 White House to President Obama, and I recall at this time
5 had not received a response. And there was a request for
6 the Corps to pile on to that request. So I sent a similar
7 request to my boss, General Semonite, for his consideration.

8 Q. So you sent a request to the chief of the Army
9 Corps of Engineers asking for him to pile on, as you said,
10 to the now several-week pending request from the governor of
11 North Dakota for federal law enforcement assistance. How
12 did your boss, chief of the Army Corps of Engineers, respond
13 to your request?

14 A. So I don't know specifically who he talked to in
15 his chain of command on -- and -- and the staff at the Army.
16 I don't know. I do recall sending a follow-up request in
17 early January, early to mid January just reinforcing that
18 aspect.

19 I don't have the details of who he spoke with
20 on the Army staff or if he spoke to the chief of staff of
21 the Army on this.

22 Q. So you just mentioned an initial request to the
23 chief of engineers, Chief Semonite, and then you mentioned a
24 follow-up request. What was the date of your first request
25 to Chief Semonite to pile on to the governor of

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1 North Dakota's request for federal law enforcement
2 assistance?

3 A. So I don't remember the exact day, I remember it
4 being early December, and I believe the second letter was
5 early to mid January.

6 Q. So a month -- a month went by after you first
7 asked the chief of the engineers to send a supportive
8 request for federal law enforcement assistance on top of the
9 several, probably month prior letter from the governor of
10 North Dakota, and then you had to ask again a month later?

11 A. I just -- a month later I added some additional
12 supporting points to our request. We were getting updated
13 hydrology reports, which we get as we get deeper into the
14 winter on snow pack, both plains and mountain, and we had
15 the additional concern that this particular parcel north of
16 the Cannonball would likely be inundated later in the
17 spring, likely either from that snow pack or the high
18 potential of ice jams, which we've seen before.

19 So I added that to our argument to General
20 Semonite and thought in any way if that could be helpful in
21 his dialogue or General Jackson's dialogue with the Army
22 staff, I wanted to make sure that they were armed with that
23 information.

24 Q. Help me understand why -- why, after you asked the
25 first time, you had to ask again a month later? Did nothing

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1 happen or was it rejected?

2 A. No. So I don't want to say nothing happened. I
3 know there was planning meetings that General Jackson
4 attended that were hosted by General Milley and senior
5 members of the Army staff working on a variety of options on
6 how the Army might help more in this particular, this
7 particular issue.

8 And I recall seeing on some of those decision
9 templates that the Army staff had prepared whether or not to
10 forward a request from the Army secretary over to our law
11 enforcement community at the federal level.

12 I -- what I recall was that Army senior
13 leaders wanted to first determine whether or not the
14 President was going to action on Governor Dalrymple's
15 request. So all of that was happening in that -- in those
16 intervening weeks before my first and second request.

17 Q. Were you surprised by the lack of inaction in
18 terms of doing, taking the step that -- that you asked for
19 to be taken by the -- by the Corps?

20 A. I don't know that I would characterize it as
21 surprised. I -- I have never had to request federal law
22 enforcement before. This is, you know, a very unusual
23 situation so I don't know if it was realistic, unrealistic,
24 it was simply an effort to try to get more resources in the
25 field. But I don't think I would characterize it as

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1 surprise. We were working hard through this issue.

2 Q. Okay. If we could -- excuse me. Something
3 happened to the -- take a minute, sir. All okay?

4 A. Yes, sir. I'm sorry. I'm fine. I apologize.

5 Q. No, no problem. No problem.

6 (Deposition Exhibit No. 364 was
7 marked for identification.)

8
9 BY MR. SEBY:

10 Q. So if we could turn to Exhibit 364, please.
11 Before we talk about this exhibit, I -- I can do it if you
12 would like, but earlier we talked about an email from
13 Chief Semonite where he wrote to you and to Ed Jackson,
14 Major General Jackson, and he said, Scott, Ed, what can I do
15 to help, what can I do to help change things that are not
16 working? Do you recall that email?

17 And do you require me to go back to that or
18 do you recall that?

19 A. I recall that email very well.

20 Q. All right. Yeah. Sure. So based upon his
21 invitation to you to do that, you thought I'll -- I'll tell
22 my boss, the chief, I think one of the ways he could help is
23 do that, right? He could ask for piling on, in your words
24 and I know what you mean, and I don't mean that pejoratively
25 but, you know, you meant it, I believe, as a support the

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1 governor's pending request. Is that an accurate way to
2 express your point?

3 A. Yeah. That was one aspect of what I asked for
4 later following that email. Really where I was looking for
5 his help was to in any way, if we could get to a decision in
6 the secretary's office on the easement. And I thought, I
7 still share to this day that that inaction or that
8 indecision on the easement fueled some of this energy in
9 the -- the protest community.

10 Q. Sure. And then the -- is in your mind, General is
11 there any relation between that, the -- I'll use your term
12 -- the inaction on the easement, and I understand what that
13 involves, the six questions after you finalized the EA and
14 then the four questions --

15 A. Yeah.

16 Q. -- and a lot of time and gestation, if you will,
17 by those folks in whose office that -- that came from.

18 Is there any relationship between that
19 circumstance, the inaction on the easement as you said, with
20 this idea of the federal law enforcement request being
21 talked about?

22 A. So I was not serving in Washington, D.C., I was
23 out west. So I am not aware of any connection in
24 Washington, D.C. between the law enforcement request and the
25 action on the easement. They went up different paths.

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1 Q. Yeah. So they're different, they're not related,
2 is that what you're saying?

3 A. I don't believe there's a direct relationship
4 between the two. The easement that was clearly in the
5 Assistant Secretary of the Army for Civil Works lane, and
6 our request for federal law enforcement went up through Army
7 operations channel, what we call the G3/5/7 staff. Separate
8 staff entities working each.

9 Q. I see. So the federal law enforcement request
10 track was -- was in the Department of the Army separate from
11 Ms. Darcy?

12 A. Yes, it was being worked by a different staff
13 section.

14 Q. Did Ms. Darcy every touch that issue, to your
15 knowledge?

16 A. I don't know. I don't know.

17 Q. Okay. Did Mr. Crook ever touch that issue either
18 by it being brought to him or inserting himself in it?

19 A. I -- I don't know.

20 Q. Okay. And okay we're talking now of Exhibit 364,
21 Rachel, if you'd please put that up on the -- on the video.

22 This is -- well, this is a -- a compound
23 email. It happens to begin at the very bottom on, a couple
24 pages later. If we could go to the base, there we go, keep
25 going all the way -- okay.

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1 So it's, this chain starts with Major General
2 Jackson's email again to Secretary Darcy and the chief. We
3 talked about this before in two prior exhibits, November 25,
4 2016. You -- you agree we've talked about that, that's the
5 one that tells the secretary and the chief that the two
6 Henderson letters went out, but we've talked about those.
7 Are you okay if I, if we agree that that's what we've talked
8 about and that's the earlier one?

9 A. Yes.

10 Q. Okay. Then the next one is the same thing, we
11 talked about it, it's Secretary Darcy's short response to
12 Major General Jackson. "I assume the letters/notifications
13 were coordinated with DOJ and BIA." We talked about that.
14 So I don't have any interest in talking about it again.

15 And then the next email in the chain is Major
16 General Jackson's response to Ms. Darcy's question. We've
17 talked about that.

18 And then your individual email discussion
19 with Major General Jackson, you're telling him you're on
20 route back to Portland. I believe given that this was just
21 after Thanksgiving, you just celebrated with your family in
22 Detroit and he responds and tells you, "Safe travels."
23 We've talked about that.

24 Unusual that Ms. Darcy acknowledged me at
25 all. We talked about that, and you said WILCO, get it. And

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1 we talked about that.

2 And so the next email in the chain that's new
3 in this exhibit, which is why I brought this exhibit in, it
4 continues your individual dialogue with Major General
5 Jackson, and you responds to you saying that morning,
6 November 26th, "Thanks. Most coverage I've seen this
7 morning is generally positive. CNN piece is inflammatory.
8 Not out of character for CNN. I think this was a great call
9 and well executed. Trick will be what actually happens on
10 5 December and what we are able to influence."

11 Is he talking about when the day comes stated
12 in Colonel Henderson's letter that as of December 5, you
13 remain on our property north of the Cannonball River and
14 magically that day we consider you to be a trespass?

15 MS. ZILIOI: Objection, foundation.

16 A. I -- I think that the concern here, if I recall
17 correctly, was that there was going to be a massive amount
18 of law enforcement that would show up on the morning of 5th
19 of December, or Army National Guard soldiers.

20 That was in none of our -- our plans, but I
21 think that was some of the concern that we may have heard on
22 the news or in some channels back in this -- this
23 time frame.

24 BY MR. SEBY:

25 Q. Help me understand, these people were on -- on the

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1 Corps property north of the Cannonball River already?

2 A. Yes.

3 Q. Okay. Were they not trespassers then?

4 A. Yes.

5 Q. Okay. And they were there for a while, weren't
6 they?

7 A. Yes.

8 Q. With your knowledge and understanding that they
9 were present without ever being asked or given a special use
10 permit?

11 A. Yes.

12 Q. Were they ever given a written permission to be
13 there otherwise?

14 A. No, not that I'm aware of.

15 Q. All right. The email above this is the last one
16 in this exhibit chain, which is you responding back to
17 General -- Major General Jackson, telling him you're
18 boarding a plane in a couple minutes and just wanted to give
19 him a couple points. And then your first paragraph reports
20 that you compared notes with John this morning, is that
21 Colonel Henderson?

22 A. Yes.

23 Q. And, "We," you and he, are leaning toward a media
24 statement within next 24 hours... versus Monday." The
25 division and district "teams are working this draft now, and

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1 I will send this to you later today for socialization before
2 we release." I don't have such a document. Do you know,
3 was there such a document and where is it?

4 A. I -- I don't recall this particular release. I
5 don't doubt that it may exist. It might have been our
6 effort to clarify the language in our letter to the 16
7 tribal chairmen, but I -- I don't recall any specifics on
8 this one.

9 Q. Yeah, me -- me neither, because your counsel has
10 told us that they've produced all records from you and
11 Colonel Henderson. So I -- who would have -- who would have
12 that document if neither of you had it in your production?

13 A. I don't -- I don't know.

14 Q. Okay. Do you recall seeing it, though?

15 A. I don't recall seeing it, I don't recall if it --
16 if one was ever released. I just don't remember.

17 Q. Okay. Next paragraph is, you say, colloquially, I
18 didn't interpret your use of the word "swing" as -- as a
19 swing, but "We're going to take a swing with Chairman
20 Archambault this week on a joint request for federal law
21 enforcement resources." Who is the joint aspect of what
22 you're referring to here?

23 A. It would be a letter submitted on behalf of the
24 Army Corps of Engineers and -- and Chairman Archambault. We
25 thought it would get greater traction than what we had seen

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1 so far.

2 Q. Chairman Archambault as a -- as a person or as the
3 chairman of the Standing Rock Sioux Tribe?

4 A. As the chairman of the Standing Rock Sioux Tribe.

5 Q. He said he'd consider doing that?

6 A. Yes.

7 Q. And that request would have been, remind me, that
8 what you talked about with Chairman Archambault that he
9 entertained was for federal law enforcement to do what and
10 where?

11 A. That's correct. It would be to help us exercise
12 our Title 36 responsibilities on the -- on the land north of
13 the Cannonball.

14 It would help us safely move people off of
15 that property into the camp that we had designated south of
16 the Cannonball, and again to keep people safe.

17 There had been a lot of tension between local
18 law enforcement officials in North Dakota and the protest
19 community, and we thought that the chairman would support a
20 new set of federal law enforcement officials that could help
21 us make this move safely. In, the end the chairman did not
22 support signing on with our request, our second request.

23 Q. And that was after you showed him a draft of the
24 letter?

25 A. I don't recall what general -- I'm sorry. I don't

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1 recall what Colonel Henderson may have shown him.

2 Q. Okay. Okay. All right.

3 (Deposition Exhibit No. 365 was
4 marked for identification.)

5 BY MR. SEBY:

6 Q. So if we could look at Exhibit 365, and, General
7 Spellmon, I'll share with you and your counsel that I've --
8 I've got five or six exhibits left that are all emails like
9 this. So the end is in sight. Do you -- I know that will
10 take us some time, and then I have just a few final
11 questions.

12 But would -- I -- I can't recall, Ms. Court
13 Reporter, how long we've been since the last break, and I'm
14 just offering General whether he'd like to have a short
15 break again or just keep charging. I know it's two hours
16 later for you.

17 A. Sir, I'm fine to keep going.

18 Q. Okay. And I am, too. I just wanted to offer
19 that. So Exhibit 365. This exhibit is a two --
20 two-component email. The first is from Lowry Crook to
21 Theresa Gonsalves, who has a Department of Transportation
22 email domain, and then Mr. Crook explains he spoke with her
23 on that day, December 1, 2016 and he says, "I'm attaching
24 the November 14th letter that I referenced, and here's a
25 link to the press statement that accompanied it. Also

1 attached is a non-public letter from Colonel Henderson."

2 What does that mean, a non-public letter from
3 Colonel Henderson?

4 A. I don't know what non-public means. A direct
5 letter from Colonel Henderson to the chairman inviting him
6 to a particular discussion.

7 Q. This discussion. Well, these letters are attached
8 here to this exhibit. And so they've -- one of the
9 attachments is a -- well, both of these attachments are
10 addressed to -- from Colonel Henderson on letterhead of the
11 department of the office -- excuse me.

12 I will say one of the letters is a
13 November 14th letter on letterhead of the Office of the
14 Assistant Secretary, and the letter is addressed to
15 Chairman Archambault, Kelcy Warren, chairman and CEO of
16 Energy Transfer Partners, and Joey Mahmoud, executive vice
17 president of Dakota Access, LLC.

18 That letter is dated November 14th, 2016,
19 signed by Ms. Darcy. So Mr. Crook is supplying that to
20 Ms. Gonsalves, who works for the Pipeline Health and Safety
21 Administration, apparently as chief counsel.

22 And the Darcy letter to the three
23 individuals, Archambault, Warren and Mahmoud, says that I'm
24 writing regarding the review the Army's initiated, and it's
25 way back on September 9, that joint statement saying we'll

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1 determine -- excuse me -- determine whether to reconsider
2 any previous decision regarding the environmental assessment
3 et cetera, the Army's completed that review, accounting for
4 information that received from the tribes and the pipeline
5 companies since September, and concluded that its previous
6 decisions comported with legal requirements.

7 The letter talks about respect for in working
8 with the -- the great Sioux nation, and then it goes on to
9 say after she first concludes that we completed our review
10 of the final action we'd previously taken, and concluded
11 that our work previously comported with legal requirements.

12 Then she goes on after the reference to
13 the -- to the interactions with the Sioux Tribe, she says,
14 "Accordingly, the Army has determined that additional
15 discussions with the Standing Rock Tribe and analysis are
16 warranted. We invite the Tribe to engage in discussions
17 concerning the following three topics." And have you --
18 have you read that, those three bullets? If not, let's
19 pause so you can do that.

20 A. Yes, sir. I'm familiar with this letter.

21 Q. Would you agree with me that she's inviting the
22 chairman of the Standing Rock Sioux Tribe to participate in
23 discussions concerning potential conditions to add to the
24 easement for the pipeline crossing under the Missouri River,
25 "to further reduce the risk of spill, rupture or hasten

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1 detection and response."

2 And that such conditions would be for the
3 benefit of the tribe in the event of a spill from the
4 pipeline and -- and that such conditions would be pertinent
5 to the decision whether to grant an easement for the
6 pipeline crossing at the current location. So that was an
7 invitation to the tribe, is that correct?

8 A. Yes, that's correct. The tribal chairman.

9 Q. Yeah, sure. How did that go, did the chairman
10 respond to this?

11 A. The chairman, as I recall, did not attend this
12 particular meeting, but the Tribal Council did.

13 Q. Okay. And how did that go, their participation?

14 A. So just a bit of context first, sir, so this
15 followed the answering the six questions, the follow-on four
16 questions, and then Ms. Darcy cites here that we had met all
17 of the technical and legal requirements.

18 At this time, she asked us to go back and
19 engage with the tribe on these three questions here with
20 experts from both Energy Transfer and the pipeline and
21 Hazardous Material Safety Agency, that's the agency that
22 regulates pipelines inspected the Department of
23 Transportation and the topic of this discussion was what are
24 the other conditions that the tribe would like to see in
25 this pipeline underneath Lake Oahe.

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1 The results of this meeting were Colonel
2 Henderson and the team reviewed 33 conditions with the tribe
3 that were either -- the Energy Transfer either agreed to on
4 the spot to incorporate or they communicated how these terms
5 and conditions had already been incorporated into the
6 design.

7 Q. Okay. So can I attempt to characterize where this
8 fits into the earlier context that you've explained to me,
9 that the Corps made a final decision earlier on the
10 environmental assessment and approved it, and Colonel
11 Henderson did so and that became final.

12 Then the joint interagency statement was
13 issued that came as a surprise to you and Colonel Henderson.
14 You didn't know about it in development and you learned
15 about it after it was issued, surprise.

16 And you raised it to the attention
17 of Major General Jackson and he looked into it because it --
18 he wasn't sure if he knew about it either.

19 And then Ms. Darcy posited six questions from
20 her office asking as part of an announced reconsideration or
21 review in the interagency joint statement of September 9.

22 And then after you, the Corps, answered those
23 questions a month or two later, four additional questions
24 were sent to you that you then reviewed and answered.

25 And after that occurred, then Ms. Darcy sent

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1 the letter to the chairman and the pipeline company saying
2 I -- we met our obligations legally, but I want to raise
3 three topics we want to talk to the tribe about, and those
4 involve 33 conditions that we'd like to discuss. Is that,
5 am I, have I got the timeline and steps accurate?

6 MS. ZILIOI: Objection, misstates testimony
7 and evidence.

8 BY MR. SEBY:

9 Q. Sir?

10 A. That is the general sequence of events of how this
11 unfolded.

12 Q. Got it. Thank you. Okay. So then the second
13 attachment that's to Mr. Crook, a letter to Ms. Gonsalves
14 with PHMSA general counsel. The second letter is a
15 November 22nd letter from the district commander of Omaha
16 District, Department of the Army Corps of Engineers.

17 And it -- it's addressed to
18 Chairman Archambault from Colonel Henderson, it says, "I am
19 writing regarding Ms. Darcy's November 14th letter that we
20 just talked about where she committed the Army would pursue
21 additional discussions with your Tribe on pipeline safety
22 matters on an expeditious timeline that allows for robust
23 discussion and analysis."

24 Then he says, "During our meeting on
25 November 17 in Rapid City, South Dakota, you stated that you

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1 had no desire to further discuss opportunities to address
2 pipeline safety. Additionally, you stated that the only
3 acceptable solution was to relocate the pipeline. The Army
4 takes its consultation requirements with tribes seriously
5 and we feel it's our responsibility to continue to reach out
6 to you on this matter.

7 "We are aware of the concerns you raised to
8 Ms. Darcy in a letter on October 28, 2016 and would again
9 like to offer you the opportunity for additional discussion
10 and analysis.

11 "The goal would be to seek potential easement
12 conditions that would further reduce the risk of a spill or
13 rupture, hasten detection and response, or otherwise enhance
14 the protection of Lake Oahe, the Tribe's supplies" -- "water
15 supplies and treaty rights."

16 So a -- an effort by Colonel Henderson to
17 reach out to Chairman Archambault but recounting the earlier
18 rebuff that he received. So what happened after that,
19 General?

20 A. I recall, as I described, the meeting went forward
21 except it was with the Tribal Council members. We went
22 through the 32 or 33 conditions, talked from a technical
23 protect with the Tribal Council, and as I mentioned, the
24 company described how they would incorporate or have already
25 incorporated those 33 conditions of the crossing.

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1 In my back brief from Colonel Henderson
2 following the meeting, he shared with me words to the effect
3 that the Tribal Council appreciated it, thanked him for all
4 the work that had been done, but stated that the tribal
5 leadership would never agree to this -- to this crossing at
6 this location.

7 Q. And did Colonel Henderson ever -- well, he
8 reported that to you I guess you're saying, right?

9 A. Yes, he did, immediately after the meeting.

10 Q. And what happened with that information once it
11 came to your attention?

12 A. Yes. I immediately shared that with the deputy
13 commanding general of the Army Corps of Engineers
14 headquarters, Major General Stevens. And I happened to be
15 going to an office call with Senator Hoeven here in
16 Washington, D.C., and I shared the outcome with Senator
17 Hoeven as well.

18 I know we informed other members of the
19 delegation in the governor's office, I just don't remember
20 who called who. I do remember talking to Senator Hoeven in
21 his office, though.

22 Q. How about others? Your superior officer, the
23 chief of the Army Corps of Engineers, Chief Semonite. Did
24 you ever tell him?

25 A. I remember talking to his deputy and that was most

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1 likely because General Semonite may have been traveling, but
2 I don't remember how I followed up with him or if General
3 Stevens did it.

4 Q. How about Major General Jackson?

5 A. Yes, we updated him as well.

6 Q. Okay. All right. Then what happened on -- on
7 that issue? The conditions idea that -- and is it accurate
8 to say you've told me that the pipeline company, those 33
9 were either in there already or were amenable to them to
10 add?

11 A. That's correct. They agreed to, if it wasn't
12 already incorporated into the design that they would do it,
13 or they showed the Tribal Council how it had already
14 incorporated into the design.

15 Q. And then what action was taken to implement the
16 pipeline company's positions? Did those things get done?

17 A. Well, no action was taken, because the -- the
18 easement was still not forwarded to Congress for
19 notification. I -- I don't remember the exact timeline
20 after we had briefed our leadership on the outcomes of this
21 meeting.

22 There was a subsequent decision from the
23 assistant secretary to move forward with an Environmental
24 Impact Statement which is a more -- a more detailed analysis
25 of this -- of this crossing.

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1 Q. General -- General Spellmon, excuse me, given the
2 fact that you are now the chief of engineers, do you know
3 whatever happened with the pipeline company's representation
4 that they would, they already addressed or will address
5 those 33 conditions, did they -- do they stand implemented
6 anywhere today or -- or not yet?

7 A. Yes, they were all, eventually when the easement
8 was approved and the pipeline was installed under Lake Oahe,
9 the 33 conditions were incorporated into the construction of
10 that particular segment of the pipe.

11 Q. So they got done?

12 A. Yes.

13 Q. So today, the pipe that's in place under the
14 Missouri River trans -- transporting oil out of North Dakota
15 to the Midwest for refining, does so under the requirements
16 of a permit or authorization of the Corps that they be done
17 and are in place?

18 A. Incorporating the latest technology, yes.

19 Q. Understood, thank you. Okay.

20 (Deposition Exhibit No. 366 was
21 marked for identification.)

22 BY MR. SEBY:

23 Q. If we could go to Exhibit 366. Okay. This is a
24 two-page exhibit, and this is another one of those, there we
25 go, that's the -- that's the substance of the exhibit which

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1 is an email.

2 Yeah, that first cover page is just a -- just
3 an articulation of who the email was sent to and who it's
4 from. But that information appears on the next page, there
5 we are.

6 General, would you take a moment and read
7 that email and observe who the sender is and who the
8 recipients are and who's copied and what the subject matter
9 is?

10 A. Just need a moment.

11 Q. Yes, sir.

12 A. Could you scroll down, please? That's it. Thank
13 you.

14 I've read it, sir, thank you.

15 Q. Okay. General, the email is from Lowry Crook on a
16 Sunday, December 4th, in the afternoon, to individuals in
17 the Secretary of the Army headquarters, and it's -- the
18 distribution includes Chief Semonite, Major General Jackson,
19 you, are the direct addressees.

20 Copied, noted to Ms. Darcy and Moira Kelley.
21 And the subject matter is "AG Statement going out now." Why
22 was Mr. Crook distributing a statement by the Attorney
23 General of the United States to this group, do you know?

24 A. I -- I don't know.

25 Q. And what he says is, "FYSA," is that -- if I

1 understood, "for your situational awareness"?

2 A. That -- that's correct.

3 Q. And it appears he's block copying and pasting into
4 his email to you all in quotes the text of the Attorney
5 General's statement going out now on Sunday, December 4, is
6 that how you read it?

7 A. Yes.

8 Q. And it says, "In light of today's decision by the
9 Department of the Army regarding the Dakota Access Pipeline,
10 the Department of Justice will continue to monitor the
11 situation in North Dakota in the days ahead and we stand
12 ready to provide resources to help all those who can play a
13 constructive role in easing tensions.

14 The department remains committed to
15 supporting local law enforcement, defending protestors'
16 (sic) constitutional right to free speech, and fostering
17 thoughtful dialogue on the matter.

18 "We recognize the strong feelings that exist
19 in connection with this issue, but it is imperative that all
20 parties express their views peacefully and join us in
21 support of a deliberate and reasonable process for
22 de-escalation and healing.

23 "The safety of everyone in the area - law
24 enforcement officers, residents and protesters alike,
25 continue to be our foremost concern."

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1 She says, "In light of today's decision by
2 the Department of the Army." What is she referring to, do
3 you know, what decision?

4 A. I believe, yeah, I -- I would have to confirm. I
5 believe she is referring to Ms. Darcy's decision to not
6 approve the easement following our last consultation with
7 the tribe in late November regarding the terms and
8 conditions that I mentioned earlier.

9 Q. You remember my general walking us through my
10 understanding of the Corps took a final action on the EA,
11 the six questions asked and answered, and the passage of
12 time and the four questions asked and answered.

13 Then the letter from her, Ms. Darcy, saying,
14 We want to have a special consultation on these terms and
15 conditions ideas, and the pipeline company responded to the
16 33 that were raised and said, We're doing it, or will do it,
17 and we'll get that locked in.

18 Then are you telling me now the next chapter
19 is Ms. Darcy said -- oh, I left out the fact that the
20 chairman didn't wish to participate in that, even though he
21 was invited expressly by the -- by Ms. Darcy.

22 But the Tribal Council did and they met with
23 you and they said, Well, appreciate the meeting, but we're
24 not going to go along with any terms and conditions other
25 than you moving the location of the pipeline.

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1 Now, are you telling me the next chapter of
2 all this is that on December 4, election has already
3 occurred, she'll be in her position presumably for another
4 month with a change of the administration, and now she's
5 announcing, notwithstanding all of that we just talked about
6 and worked on over the last several months, no go. No
7 decision, or no -- no approval of an easement will be given.
8 Affirmatively not.

9 Is that accurate?

10 MS. ZILIOI: Objection, misstates evidence,
11 ambiguous.

12 MR. SEBY: I'm asking a question if that's
13 accurate.

14 MS. ZILIOI: Same objection.

15 A. I believe, I would have to confirm, I believe that
16 is the decision that is being referenced here in that first
17 sentence. This day stands out to me because I remember
18 informing Colonel Henderson of this decision, and he shared
19 with me he was done, he was ready to retire, and he did.
20 That -- I remember December 4th very well for that reason,
21 but I believe that was the decision that Ms. Darcy had made
22 on this at this time.

23 BY MR. SEBY:

24 Q. Wow, Colonel Henderson was -- he had reached his
25 boiling point, I guess, right?

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1 A. Colonel Henderson was extremely frustrated by this
2 point in time.

3 Q. Yeah. Yeah. How'd you feel?

4 A. I felt a lot like Colonel Henderson.

5 Q. Understand. I don't know how to interpret the
6 rest of the Attorney General's statements, it's difficult to
7 understand what it means. But that second paragraph, "The
8 department remains committed to supporting local law
9 enforcement," what does she mean, to the extent you know?

10 I -- I mean, I know you -- you were sent this
11 and maybe you never talked to the Attorney General or had
12 any idea what that -- that means, but do you have a sense at
13 all?

14 A. I -- I don't have a detailed sense of what she
15 means in that paragraph.

16 Q. Okay. I don't want to pick on Colonel Henderson,
17 he's an honorable guy and service record for sure, I respect
18 that a hundred percent and I don't know anybody who doesn't,
19 but can you describe why he was frustrated with this latest
20 announcement from Ms. Jo-Ellen Darcy, the assistant
21 secretary of the Army for Civil Works, a political
22 appointee?

23 A. Yes. John and I shared a lot of the same
24 frustration. We're both engineers. We felt we had done due
25 diligence in the environmental assessment and the record of

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1 decision that we had arrived at the summer before.

2 We felt that we adequately addressed both the
3 legal questions and the technical questions, both sets. We
4 felt that we adequately addressed the technical concerns
5 from the tribe on the pipeline at the given crossing. So we
6 felt we had -- we had done our job for this particular
7 action.

8 Q. Yeah.

9 A. Just, it did not -- it just did not move forward
10 from the secretary's office.

11 Q. Sure.

12 A. We felt we had done our work.

13 Q. Understand. Okay. Let's see, if we could go to
14 Exhibit 367.

15 (Deposition Exhibit No. 367 was
16 marked for identification.)

17 MS. ZILIOLO: Mr. Seby, just quickly while
18 that's going up. I believe we have about ten minutes left.
19 Please correct me if I'm wrong, but I just wanted to make
20 sure you're close to wrapping up, I hope.

21 MR. SEBY: Let's take -- let's go off the
22 record for a moment and discuss the timing.

23 MS. ZILIOLO: Sure.

24 THE VIDEOGRAPHER: Okay. Going off the
25 record at 4:15.

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1 (Discussion held off the record.)

2 THE VIDEOGRAPHER: Going back on the record
3 at 4:17.

4 BY MR. SEBY:

5 Q. Thank you. General Spellmon, we're back on the
6 record, and just a short period of time remaining, so I'm
7 going to ask you just a few additional questions.

8 Sir, can you recall a time when you or any of
9 your Army Corps or Department of the Army colleagues made a
10 statement or took an action that resulted in a de-escalation
11 of the protests that were occurring on Corps property?

12 A. I'm sorry. Could you repeat the question? Did we
13 take any action that actually de-escalated --

14 Q. Can -- can you recall the time when you, in your
15 capacity as Northwest Division Commander or any of your
16 Corps or Department of Army colleagues made a statement or
17 took an action that resulted in a de-escalation of the
18 protests, in your opinion?

19 A. It -- it's too difficult to measure. We -- we did
20 a lot of coordination, we did a lot of communicating to try
21 to tie that to any de-escalation on protests out in the
22 field. I don't know that I have a way to measure that.

23 Q. Okay. Do you recall earlier the -- the exhibit
24 when we first started rolling through exhibits early in that
25 process where you told Major Jackson and I believe

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1 Chief Semonite that you referred to the protesters on Corps
2 land as -- as trespassers?

3 A. Yes.

4 Q. And did you do that, sir, because they were there
5 without first obtaining a special use permit or written
6 permission from the Court?

7 A. Yes.

8 Q. Did you -- did you or the Corps, anyone in the
9 Corps or the Department of Army, decide not to evict the
10 DAPL protesters on Corps property? Did you ever make an
11 affirmative decision to do so?

12 A. I'll give you a two-part answer. First, we never
13 had the means to evict anyone off of the Corps property.
14 And, yes, it was a -- remained my assessment that even if we
15 had the means, that would have just complicated the issue
16 and raised the tension already in the field. We recommended
17 against it.

18 Q. And did you ask any other actors outside the Army
19 Corps of Engineers, the Department of Army, whether it was
20 state, local or other federal authority, to evict persons
21 trespassing as you noted on Corps property, did you ever ask
22 for that assistant?

23 A. No.

24 Q. And given the fact --

25 A. Mr. Seby, I'm sorry. Yeah. So I would say we had

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1 the formal request that went up in December of '16, and as
2 you remember January of '17, and that was from public safety
3 and to help us enforce our Title 36 responsibilities given
4 the onset of winter, the potential for flooding, and to
5 de-escalate the tension. So, yes, there were those two
6 formal requests later in the year.

7 Q. And those requests that you're referring to are
8 your requests to Chief Semonite to -- to help?

9 A. Yes, that's correct.

10 Q. But that was within the -- within the Corps
11 itself, not -- you didn't ask outside of the Corps whether
12 it was local, state or other federal, that -- that just
13 didn't happen is what I understood you to say?

14 A. We'd work that through, request of that nature
15 through our chain of command.

16 Q. I understand. After the United States, and I'm
17 using that term, agreed to let the protesters continue to
18 occupy Corps land and set up camps, bring vehicles, never
19 getting permits on that, is there any authorization to your
20 knowledge in Corps or other agency rules or statutes that
21 authorize that?

22 MS. ZILIOI: Objection, assumes facts,
23 misstates evidence.

24 BY MR. SEBY:

25 Q. To your knowledge, sir?

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1 A. No, so this is clearly where we had to operate
2 outside of our established regulations in the interest of
3 public safety.

4 Q. Okay. And I appreciate your candidness about all
5 of that. Ultimately, given that that circumstance and your
6 intentions, but the reality of what happened and the
7 consequences of those people being on the Corps property,
8 and the time period for the length of time for which they
9 were there and what they were doing on the Corps property,
10 and what they were doing off of the Corps property,
11 ultimately as a result of those things in your opinion, do
12 you believe that the State of North Dakota was left, ended
13 up holding the bag for all that stuff?

14 Meaning they had to provide security, medical
15 restoration and maintenance costs as a consequence of that
16 happening on federal property?

17 A. My response would be I think those things would
18 have happened whether those protests camps were on Corps
19 property or if we moved them and they landed on private
20 property or state land. Those law enforcement
21 responsibilities and burdens would have still existed.

22 Q. That's a hypothetical, though, because the fact is
23 I think we've -- we've talked extensively that
24 you acknowledge they were on federal property, and that was
25 the reality, not some might-have-been-worse or

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1 could-have-also-happened-if kind of thing. I don't mean
2 that as a criticism, but I just want to ask you whether or
3 not there's a difference between what happened and what you
4 were concerned about as a hypothetical, albeit sincere, I'm
5 just asking about do you agree there's a distinction there?

6 A. It's based on my personal assessment having been
7 in the field, having talked to a number of -- of those
8 protesters in not only North Dakota, but those in other
9 places of the country as well. That's my assessment of what
10 would have occurred.

11 Q. Yes, sir. I understand. All right. Well, I -- I
12 want to thank you for your time and attention and the
13 discussion. I -- I hope I've been respectful and courteous
14 to you throughout this deposition today, sir?

15 A. Yes.

16 Q. Thank you.

17 A. And likewise, sir, thank you.

18 MR. SEBY: At this time, I have no further
19 questions, General Spellmon, and to the extent
20 Ms. Zilioli -- Zilioli has any, I pass to her.

21 MS. ZILIOLO: Yes. Thank you so much. Just
22 very briefly.

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EXAMINATION

BY MS. ZILIOLOI:

Q. Earlier, General Spellmon, you were asked about a potential joint request for federal law enforcement support from both the Corps and Chairman Archambault. Do you remember that line of questioning?

A. Yes.

Q. And in the course of that questioning you said something to the effect about that the federal law enforcement might help the Corps exercise its Title 6 (sic) obligations. What did that refer to?

A. Right. So we wanted, as part of this effort we wanted to be -- have the ability to safely move protesters off of the camp north of the Cannonball to the land that we designated south of the Cannonball.

We thought new faces from the law enforcement community, given the tensions that had arised between these protesters and those officials from Morton County, having a fresh set of faces out there would help us keep the tension down if we were able to make that move happen.

Q. Okay. Thinking specifically about the piece of your testimony about the Corps' Title 36 obligations, do you agree that the Corps has discretion as opposed to an obligation to close or not close its managed lands?

A. It has to exercise a lot of discretion.

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1 Q. Would you also agree that the Corps has discretion
2 to -- under its Title 36 authorities to allow protesters to
3 remain or not, whether or not they have a special use
4 permit?

5 A. The commanders absolutely have that discretion.

6 MS. ZILIOLO: Okay. Thank you. I have no
7 further questions. Mr. Seby?

8 MR. SEBY: And neither do I, so I thank you
9 again, sir, and wish you good evening.

10 THE WITNESS: Thank you.

11 THE VIDEOGRAPHER: Counsel, I'll go ahead and
12 conclude this video deposition. This concludes the
13 video-recorded deposition of Lieutenant General Scott
14 Spellmon. Going off the record at 4:26 p.m.

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Deponent: LIEUTENANT GENERAL SCOTT SPELLMON
Case: State of North Dakota v. The United States
Date Taken: April 22, 2022

[illegible]

I declare under penalty of perjury that the foregoing 249 pages are true and correct except for such corrections as I may have noted above.

Lieutenant General Scott Spellmon

April 22, 2022

REPORTER'S CERTIFICATE

I, CHERYL L. HAASE, RPR No. 12443, Registered Professional Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

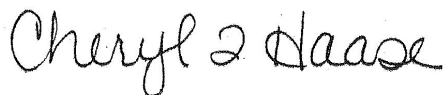
That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That a review of the transcript by the deponent WAS requested;

That the foregoing is a true and correct transcript of my shorthand notes so taken. I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of Oregon that the foregoing is true and correct.

Dated this 1st day of May, 2022.



Cheryl L. Haase, RPR
NCRA RPR No. 12443
Notary Commission No. 1020069
My Commission Expires 1/12/26

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